

MONTANA LEGISLATIVE HISTORY

Chapter 365 19 74

Bill H 559 S _____ Original bill & history ____C

H. Committee on Judiciary

Hearing Date(s) Jan 14 ✓C

Jan 24 ✓C

_____C

_____C

Date Out _____C

S. Committee on Judiciary

Hearing Date(s) Feb 21 ✓C

Feb 27 ✓C

_____C

_____C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____

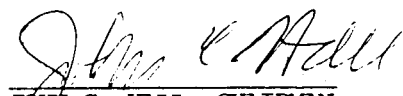
Report _____

HOUSE BILL 637 Representative Towe, chief sponsor, stated this bill is for purpose of defining the rights of father of illegitimate child in adoption proceedings. With this bill the father would be given a time limit in which to protest adoption of his child. He also passed out a form to each member proposing an amendment to this bill. There is also provision that if no claim is made within six months the rights of the father are terminated. Mr. Towe feels this bill sets forth a very necessary procedure in the adoption of illegitimate children.

Proponents of bill were Richard Shaules, Reverend Firebaugh, both adoptive parents and Margaret Stuart from Social & Rehabilitation Services in Helena. No opponents. Following brief questioning by committee members including question by Representative Baucus as to how this bill stacks up with the ERA, the hearing was closed.

HOUSE BILL 557 Chairman Hall stated that Mr. Henry Loble and Mr. Bjaime Johnson would testify on behalf of setting salaries of attorneys in relation to probate matters. This is the only portion of the bill to be discussed today. Mr. Johnson and Mr. Loble both stated that though they had originally gone along with the proposal to set attorneys fees after thinking about it they felt this would not be good legislation. Mr. Johnson feels collateral relatives should pay their own way and doesn't feel an executor should serve for free either. Should fix costs as well as fix prices. Suggested 1) leave Uniform Probate Code as was originally submitted providing attorneys allowed reasonable fee; if there are abuses then take care of them next year; 2) If must restrict than put it in for cases where parties cannot agree; 3) Establish fees only in those states going to surviving spouse and minor children. Following questions from the committee the hearing was closed.

The meeting adjourned at 10:40 AM.


JOHN C. HALL, CHAIRMAN

NAME :

DATE :

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS :

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME:

Byrnie Johnson

DATE:

ADDRESS:

Great Falls, Mont

PHONE:

761-3000

REPRESENTING WHOM?

Mountain Bar

APPEARING ON WHICH PROPOSAL:

H.B. 557

DO YOU:

SUPPORT?

X

and

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Mr. Dowling suggested getting Legislative Council to fund costing of study.

Representative Greely stated House Bill 250 was killed last session in the Senate. Disturbed interim committee didn't do more work on these bills.

Representative Towe stated the problem with Senate Bill 38 was there was too much money involved. Senate Bill 331 added more benefits but is not that way now, takes away some liability. To the extent you have first party coverage you cannot sue. Excluded property damage from Senate Bill 331.

Chairman Hall inquired of committee what they wished to do with these bills if neither of the two sources of funding for an actuarial study are available.

Representative Towe suggested that if can't come up with money then take action and move bill out on the floor.

Chairman Hall asked the committee to assume there is no money, where do they want to go from here.

Representative Greely stated he wanted to take no-fault bills and set them for hearing. He hasn't heard any testimony yet and as committee member wants to hear testimony.

Representative Marbut philosophized on legislature making far reaching effects without much study. Suggests asking for money from Legislative Council.

Chairman Hall stated he would set hearing on bills, all of them, for two weeks from today, regardless of whether we have the money and the study or not and following hearing will act upon the bills.

Representative Greely so moved. Representative Towe seconded. Motion carried unanimously.

HOUSE BILL 557 Chairman Hall stated report on Uniform Probate Code will be ready today. \$3,000 was made available for purpose of study on Uniform Probate Code which was not spent. Stated Jim Zion is available for the next few days to do a study with part referring to amending present sections of law. The study from the University was not too good. Chairman Hall stated that seeing no objection he would request Jim Zion to do this study on the Uniform Probate Code.

HOUSE BILLS 797 and 798. Representative Marbut moved that these two bills be referred to a special sub-committee appointed by the Chair. Motion carried.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE SENATE

February 21, 1974

The meeting was called to order by Senator McKeon, chairman, at 5:15 p.m. in the Governor's Reception Room.

The following bills were heard:

HB 224

HB 461

HB 557

HB 224-- (COMPANSION BILLS) Witnessess appearing on the bill:

461

557

Rep. Joe Roberts, speaking for Rep. Hall, sponsor
Bjarne Johnson, attorney, Great Falls
Rep. Max Baucus, Missoula
Senator Romney, District 22, People's Power League
Frank Anderson, Peoples Power League
Tom Stoll, Department of Revenue
Jim Morrow
Frances Elge, Billings
Rosemary Zion, Legislative Council
Frank Cowan, Nat'l Federation of Retired Employees
Claude Williams, Montana Senior Citizens Assn.

Rep. Roberts, a member of the interim committee on HB 557, said that there was substantial public input into the deliberations of the bill. He said this was a "product of compromise". The bill provides for set attorney's fees, and has a joint tenancy clause, which changes the cumbersome laws that now exist.

Mr. Johnson gave an overview of what was contained in the Probate Code. This bill was drawn up in order to provide guidelines in determining what to do with the assets of an individual who dies. The British work under two systems: 1) the Church court, which is informal, and 2) the Law court, which is formal. Mr. Johnson said that they tended to follow the "informal" proceedings in drafting this legislation. He said that the Probate Code was a continuing law suit, and that the general though if, unless there is a problem in probate, one should be able to handle it informally without court intervention. The present laws handle the property of a person who dies with a will, differently from one who doesn't have a will. This Code would change this. It states that the first \$50,000 would go to the surviving spouse. UnMr. Johnson said the Probate Code must be compared with the existing Montana code. Presently, one can disinherit his spouse, under the new code this cannot happen. He said that people are afraid that heirs will run away with the property, but if the spouse has automatic has automatic rights to 2/3 of the assets, this cannot happen.

If that person acts discriminately, he may be placed under bond. Mr. Johnson said the greatest benefit of the bill would be to the smaller estates, and would provide for a permanent power of attorney. A person may choose anyone he wants to represent him, and if that person becomes incompetent, he may be dismissed.

- Rep. Baucus, sponsor of HB 461, which determines joint tenancy, said that he strongly endorses HB 557, and upon its passage, would recommend that his bill, HB 461, be not concurred in.

Senator Romney felt that the husband or wife should, upon either's death, carry on ownership without entering into court. The result of the studies on this was HB 461. Further work was done by the People's Power League, and their end result was HB 557. S. Romney and Mr. Anderson said that the League strongly endorses the bill.

Mr. Stoll said that he sent a letter to the Committee, with suggested amendments on the bill, but would request that action on this amendments be held over until the next session to see how well the law is implemented.

Mrs. Elge submitted to the committee, suggested amendments (ATTCH). Ms. Zion also submitted technical amendment for the bill, which were prepared by James W. Zion, an attorney who was recommended by the House Judiciary to study the codes (ATTCH). He would be available for any questioning.

Mr. Cowan, supporting the bill, said he would also like to see joint tenancy included in the laws. Mr. Williams also supported the bill.

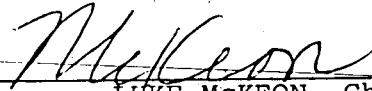
Mr. Morrow, opposing the bill, felt that the existing codes, with some amendments, was satisfactory, and that the new code was simply a copy of the present Montana laws. He felt that there was no need for the new 250 paged code, and that this new Code was not adequately presented to the People of Montana. Mr. Morrow said that the new codes contained 2 things which were not in the old codes: the subject of joint-tenancy and attorney fees. He said that judges were careful in setting their fees, and that the bill was going much further than it legally ought to entertain. The bill could be handled easily with a \$40,000 exemption by filing a death certificate. He felt it was dangerous to include joint tenancy in the law, and that it depended on the conditions of the married couple. He also stated that the new code would be opening fraudulent workings, by exposing the estate to anyone if there were no will, and that the people were misled by the bill's effort in shortcut proceedings. He said that the bill has no provisions for inheritance tax, and felt that the present laws were adequate, except in the area of joint tenancy.

February 21.

In his closing statements, Mr. Johnson said he would like to see the new Codes adopted as is, and to make amendments as they are needed. He said that Chief Justice James T. Harrison also supported the bill. The idea of "informal" law is not new in the U. S. Court, but may be new to Montana attorneys.

SENATOR MCKEON RECOMMENDED THAT THESE BILLS BE PLACED IN A SUBCOMMITTEE WITH SENATORS GILFEATHER, TURNAGE, MOORE, AND MCKEON AS MEMBERS.

There being no further business, the meeting was adjourned to reconvene Monday, February 25 on adjournment.



LUKE MCKEON, Chairman

ROLL CALL

SENATE JUDICIARY COMMITTEE

SECOND HALF - 43rd LEGISLATIVE SESSION 1974

Date: 2-21-74

NAME	PRESENT	ABSENT	EXCUSED
Luke McKeon	✓		
Pat Gilfeather	✓		
Paul Boyland	✓		
Mrs. Boots Hall	✓		
Miles Romney	✓		
Glenn Drake	✓		
Tom Harrison			✓
Jim Moore	✓		
Jean Turnage	✓		

DATE

2-21-74

COMMITTEE ON

Judiciary

BILL NO.

557, 224

461

VISITOR'S REGISTER

NAME	REPRESENTING	BILL NO.	Check One	
			Support	Oppose
Frances C. Edge	Self	HB 557	amendments	
Claude D. Williams	Montana Senior Citizen Assoc	HB 557	X	
Norman Jones	Mont. Senior Citizens	HB 557	X	
John L. Austin	Mont. Veterans, Lib. R.R. Imp	HB 557	X	
Vernon Stephens	AARP	HB 557	X	
Larry Payton	AARP Pres. & Staff	HB 557	X	
Wilbur Robinson	A.A.R.P. Eastern District	HB 557	X	
Charles Leffingwell	NARFE Reg. Comm.	HB 557	X	
Herbert R. Sheddings	AARP Ch. 231 V.P. Leg. Com	HB 557	X	
Frank W. Anderson	Peoples Power League	HB 557	X	
Nancy L. Hilling	Mont. State AFL CIO	HB 557	X	
Joe Roberts	State Legislator			
Tom Stoll	Dept. of Revenue	HB 557		
John A. Mayne	First National Bank Helena	HB 557	X	
May Bauer	Missoula County	HB 461 HB 557	X	
Clarence R. Beitman	NARFE + Peoples Power League	HB 557	X	
Lloyd R. Good	NARFE -	HB 557	X	
Harold L. Dusenberry	A.A.R.P. Bismarck	HB 557	X	
Frank T. Crowder	Mont. Fed. Ret. Federal Emp	HB 557	X	
Thomas D. Elliott	(NARFE) Bismarck Off. of Reg. & Appeal Dept. of Prof.	HB 557		X
Don W. Zorn	Self	HB 557	X	
James F. Moran	Self	HB 557		X

(Please leave prepared statement with Secretary)

Name Mr. Robert Majerus - House Bill No. 557

Address Valley, Montana Date 2/21/94

Whom do you represent? self

Amend? Oppose? Support? ✓

Please leave prepared statement with secretary.

*Mr. Majerus phoned his support, urging
passage of the Uniform Probate Code.*

Name Gene and Iris Ewin House Bill No. 4557

Address 312 S. Delaware, Concord 59425 Date 2/21/74

Whom do you represent? self

Amend? _____ Oppose? _____ Support? ☒

Please leave prepared statement with secretary.

These people phoned & their strong support and urged passage of the Uniform Probate Code.

Ray L. Sehn

Name James H. Morrow Bill No. H537

Address Bozeman Date _____

Whom do you represent? _____

Amend? _____ Oppose? ☒ Support? _____

Please leave prepared statement with secretary.

PEOPLES POWER LEAGUE

HAMILTON, MONTANA 59840

P. O. BOX 633

February 21, 1974

Honorable Members of the
Senate Judiciary Committee

Gentlemen:

The Peoples Power League was formed about one year ago to promote legislation allowing transfer of title on joint tenancy property to pass to the surviving tenant without court procedures. Many meetings and much research ensued, not only on joint tenancy but on the Uniform Probate Code.

We respectfully urge you to report HB 557 ^{unchanged} out of Committee with a "do-pass".

Sincerely,

Wiles Romney Chairman

Montana Federation of Women's Clubs
Montana AFL - CIO
Montana Farm Union
Montana State Grange
Montana Farm Bureau
Montana Federation of Clubs of N.A.R.F.E.
Montana Unit No. 69, Nat'l Ass'n of Retired & Veteran
Railway Employees
Montana D.A.V.
Montana W.W.1 Veterans
Montana Senior Citizens Centers
Montana Senior Citizens Ass'n, Inc.

Montana Joint AARP & NRTA Legislative Committee

BEFORE THE SENATE JUDICIARY COMMITTEE, HAVING UNDER CONSIDERATION
H.B. 557, Uniform Probate Code.

STATEMENT OF FRANCES C. ELGE, Administrative Law Judge, Office of
Hearings and Appeals, U. S. Department of Interior.

It is proposed to amend § 2-102 (page 24) to read:

§ 2-102. Share of Spouse. The intestate share of the surviving
spouse is:

- (1) if there is no issue, the entire intestate estate;
- (2) if there are surviving issue, one-half (1/2) of the
intestate estate.

JUSTIFICATION: Subsection (2) of § 2-102 now in H.B. 557 reads:

"(2) if there are surviving issue, all of whom are issue of the
surviving spouse also, the first fifty thousand dollars (\$50,000),
plus one-half (1/2) of the balance of the intestate estate."

If an estate consists primarily of land, such as in an
Indian trust estate, the surviving spouse's share must be computed
by subtracting \$50,000 from the total value, dividing the remainder,
and adding half the remainder to the \$50,000. The sum becomes the
numerator; the value of the estate, the denominator, in defining the
surviving spouse's share.

The issue then receive their fractional interests of the
remaining "half of the balance."

Exhibit 1, attached hereto, is an actual Indian estate with the formula of § 2-102 (2) applied.

Montana has seven Indian reservations, six of which have lands allotted to individual Tribal members. Interests in the allotments already are fractionated by having descended through series of estates. With estates to which "the first \$50,000, plus half the balance" provision must be applied, the administrative work in computing ownership of the lands will be difficult to comprehend and surmount.

Some attorneys with whom I have discussed this provision foresee difficulty in other estates where landed interests are involved. What of an abrasive family situation where accuracy of appraisal becomes an issue?

Are we not also unduly discriminating against a second spouse in a situation where, for example, the first spouse died very young survived by issue and there was then a second marriage of many years; in that situation the spouse of years, who may have also shared parenthood with the deceased, would receive property under subsection (3) of the bill as written. The same would be true in the situation of an unfortunate marriage ending in a divorce, where there was a child.

It would seem fair to all, including children, to amend § 2-102 to read as hereinabove set forth.

It is proposed to amend § 2-103 (pages 24, 25) Share of
Heirs other than Surviving Spouse, by striking out subsections (4),
and (5) and inserting in lieu thereof, the following:

(4) if there is no surviving issue, parent, or issue
of a parent, to the next of kin, in equal degree, excepting that
where there are two (2) or more collateral kindred, in equal degree,
but claiming through different ancestors, those who claimed through
the nearest ancestor must be preferred to those claiming through
an ancestor more remote.

JUSTIFICATION: It is conceivable that under the bill as amended,
descendants of grandparents could be as remote as cousins three times
removed--7th degree from the deceased, a degree farther removed
than second cousins who might be next of kin under subsection (5)
now in the bill.

Additionally, making descendants of grandparents, ad infinitum,
heirs, invites a bureau of missing persons search. Attached Exhibit 2
is the record of a Washington estate under a like provision of the
Washington Code. Note that there were 26 heirs, fractionating one
estate to a common denominator of 540. Please also note that we
compiled eight pages of family data to be assured of including all
heirs. And we had descendants only of the maternal grandparents.

Could the effective date (p. 254) be changed to July 1, 1975?

This would accommodate the public much better than January 1, 1975,

because next year's study of experiences in our sister states
could well call for amendments which could be incorporated before
such later date.

Thank you for your consideration.

Francis C. Elge

TO: Representative John Hall

FROM: James W. Zion

RE: HB 557, Uniform Probate Code

- 1) Attached are lists of further repealed statutes, amendments, and a table of unrepealed sections of Title 91.
- 2) The repealer lists the statute repealed, the UPC provision which either expressly or by implication repeals the statute, and a short description of the statute. The asterisk indicate sections which should be especially checked by you and the committee to see whether it is the intent of the committee to repeal them. I will, of course, amend any sections which it is felt should not be repealed.
- 3) All titles of the Revised Code of Montana have been reviewed by scanning chapter headings and by checking the index under wills, estates, dower, etc.

REPEALERS

<u>REPEALED</u>	<u>UPC</u>	<u>PROVISION AND WHY</u>
91-103	3-403, 3-407	Wills contest grounds; UPC provides standards
*91-104	1-201(8), 1-201(29)	Charitable governmental, and corporate devisees: Devisees are defined as being any person, which in turn is defined as being any corporation organization or entity.
*91-109	1-502	Conditional will: UPC provides for independent events.
91-117	1-201 (48) 2-509	Codicil as republishing a will: a codicil is a will and as such revival is provided for.
91-118	2-502, 2-503	Nuncupative wills are abolished.
91-119	2-502, 2-503	Nuncupative will are abolished
91-120	"	" " " "
91-121	"	" " " "
*91-123	3-407, 2-507 (1)	Proof of revocation by destruction.
*91-131	2-609 3-814	Encumbrance not revocation.
*91-132	1-201(33) 2-604	Conveyances not revocation.
91-134	2-507 1-201(48)	Codicils revoked: Since a codicil is a "will", general revocation doctrine applies
91-202	2-603	Intention ascertained from will: UPC makes this clear.
91-225	3-101	Vesting: under UPC, property devolves upon death.
91-302	3-812 3-1004 3-1006	Code has exemptions and provisions for payment and the estate is then chargeable for debts.
91-305	Id. 3-902	Order of resorting to property: Code abatement takes care of this.
91-306	3-902	Abatement within a class is handled by the code.
91-310	3-101	Time of running of interest.

91-315	3-203	Where "executor" is implied in the will, a (1) would include him.
91-316	3-203	The UPC handles the sole preference of appointment of personal representative.
*91-320	3-908 3-1006	Recovery of property from distributees for the satisfaction of claims is provided for.
91-401	1-201(42)	Successor is defined in the UPC
91-422		Liability of distributees is provided for by reopening and recovery procedure.
*91-623		Estates less than \$500: handled by summary procedure and small estate sections.
*91-624		Summary settlement is handled by the code
*91-625		" " " " " " "
*91-626		" " " " " " "
*91-627		" " " " " " "
91-812		Probate of holographic wills: handled by the code.
91-1201	3-402	Proof of lost or destroyed wills.
91-1202	3-402	Proof of lost or destroyed wills.
91-1205	2-502, 2-503	Nuncupative will are abolished.
91-1206	"	" " " "
91-1207	"	" " " "
91-1304	3-203	The code only requires a "qualified person".
*91-2205	3-713	Debts by a personal representative = a conflict of interest.
91-2714	3-804(2)	Presentation of claim when prior action pending: Not required by the UPC
91-2722	3-7 (3)	Where the Personal representative has a claim: He must get approval.
91-3206	3-709, 3-711	Action on bond by subsequent personal representative implied.
91-3208	3-715(17)	Power to compromise debts.

91-3401	3-808	Liability of personal representative
91-3501	3-706, 3-204, 3-708, 3-1002 3-1003	Accounting by personal representative
91-3502	Id.	Requiring an accounting
91-3503	"	Petitions to account
91-3504	"	Citation to account
91-3505	"	Objective to accounts.
	3-1005	
91-3506	3-602, 1-302, 1-304	Power of court over personal representative
91-3507	See 91-3501	Accounting after notice.
91-3508	Id. 3-611	Accounting upon removal of personal representative.
91-3509	ID. 3-611	Revoking authority
91-3510	ID.	Documentation of accounts.
91-3511	Id.	Small items.
91-3512	Id.	Day of settlement.
91-3513	3-1002 3-1003	When closing is final
91-3514	1-107, 3-1008 -1005	Binding affect of closing
91-3515	3-1005	Contesting closing statement
91-3516	Id.	When closing statement is conclusive.
91-3517	3-1002, 3-1003	Proof of notice upon closing.
91-3518	3-715	Powers of sale
91-3519	3-715	Power to invest of loan assets.

91-3609	3-1002, 3-1003	Distribution, extensions.
91-3610	3-1002, 3-1003	Trial account.
91-3611	3-807, 3-703(b) 3-502	Interested person can require payment.
91-4519	5-312 5-209	Relation of guardian and ward.
91-4520	5-208, 5-209	Court control of guardian.
91-4526	5-307	Discharge of guardian.
91-4605	5-204 5-206	Priority of appointment of a guardian of a minor is provided for.
91-4609	5-425(2)	Support of a minor from his own estate is provided for.
91-4905	5-423(7)	Partition of a ward estate.
91-4909	5-312(b) 5-414	Compensation of guardian
✓ 91-5008	5-424	Sale of property by guardian/conservator.
91-5009	1-302	Hearing procedure.
91-5010	1-304	Not necessary
91-5011	Id. 5-408(2)	Court orders.
✓ 91-5012	5-411	Bonds for guardian/conservator.
91-5013	Sec. 5	Protected person proceedings repeals by implication.
91-5014	5-422, 5-423	These sections, regarding sale by guardian, repeal by implication.
91-5015	5-424(c)(7)	Repeals by providing for credit sales.
91-5016	5-408, 5-416	Court orders regarding investment are provided for.
91-5201	5-307	Examination and removal of guardian.

91-5204	5-411, 5-416	Bonds for guardians/conservative.
91-5205	"	" " " "
91-5211	"	" " " "
84-4110	3-1010	Payment of taxes.
93-6352	2-113	Sale of dower interest.
93-6353	2-113	Procedure in sale of dower.
93-6354	2-113	Release of dower.
33-129		Setting up homestead as life estate with remainder.

AMENDMENTS REQUIRED TO CONFORM R.C.M. 1947 TO UPC

(Dower and Curtesy language)

"Terms to be construed as intestate share of surviving spouse or elective share of surviving spouse. Where in the codes of the state of Montana the terms "dower" or "curtesy" are used, such terms shall be construed to mean, unless the context clearly requires to the contrary, "elective share of surviving spouse" as defined by this act."

(Devise language)

"Terms to be construed as a devise. Where in the codes of the state of Montana the terms "bequest" or "devise" or a combination of such terms are used, such terms shall be construed to mean, unless the context clearly requires to the contrary, a devise as defined in section 1-201(7) of this act."

(Devisee language)

"Terms to be construed as a devisee. Where in the codes of the state of Montana the terms "legatee", "devisee" or any term referring to persons designated in a will to receive real or personal property pursuant to a testamentary disposition, or a combination of such terms is used, such terms shall be construed, unless the context clearly requires to the contrary, a "devisee" as defined in this act."

(Guardian language)

"Terms to be construed as a guardian or conservator. Where in the Revised Codes of Montana, 1947, the term "guardian" is used, such term shall be construed, unless the context clearly requires to the contrary, to mean either a "guardian" or a "conservator" as defined by this act, depending on the context of the section involved."

(Letters language)

"Terms to be construed as letters. Where in the codes of the state of Montana the terms "letters of administration", "letters of administration with will annexed", "letters testamentary" or a combination of such terms are used, such terms shall be construed to mean, unless the context clearly requires to the contrary, "letters" as defined in section 1-201(23) of this act."

~~"25-233. Fees of clerk in probate proceedings. At the time of filing the petition for letters testamentary, of administration or guardianship, an application for informal probate or appointment, a petition for formal probate or appointment, a petition for appointment of a guardian of a minor or acceptance of such appointment, a petition for appointment of a guardian of an incapacitated person or acceptance of such appointment, a petition for appointment of a conservator of the estate of a protected person or acceptance of such appointment, the clerk must collect from the petitioner or person accepting such appointment the sum of ten dollars (\$10). ..."~~

"25-237. Fees of public administrator. The public administrator is allowed to receive and collect for his own use, for services rendered, the same fees as are allowed personal representatives executors and administrators, as provided in section 91-3407 3-719 of this act."

"45-603. Priority of wages in case of death of employer. In case of the death of any employer, the wages of each miner, mechanic, salesman, clerk, seryant, and laborer for services rendered within four (4) months next preceding the death of the employer, in the amount actually owed, ~~rank-in-priority-next-after-the-funeral expenses; expenses of the last sickness; the charges and expenses of administering upon the estate; and the allowance to the widow and infant children;~~ are preferred debts under section 3-805(1) (E) of this act, and must be paid before other claims against the estate of the deceased person."

"91-2706. Judge may present claim, and action thereon. Any judge of the district court may present a claim against the estate of a decedent for allowance to the executor or administrator personal representative thereof, ~~and if the executor or administrator allows the claim, he must in writing designate some judge of the district court of an adjoining county or district, who upon the presentation of such claim to him, is vested with power to allow or reject it,~~ and the judge presenting such claim, in case of its rejection by the ~~executor or administrator or by such judge as shall have acted upon it,~~ personal representative, has the same right to petition or sue in a proper court for its recovery as other persons have when their claims against an estate are rejected."

"91-2725. Payment of debt to stop running of interest. If there be any debt of the decedent bearing interest, whether presented or not, the executor or administrator personal representative may, ~~by order of the court or judge,~~ pay the amount then accumulated and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether said claim be then due or not; and interest shall thereupon cease to accrue upon the amount so paid."

"91-521. Duties of executors and administrators personal representatives in estates involving alien heirs. In any estate where money or property would have vested in any alien person but for the provisions of section 91-520, it shall be the duty of the executor or administrator personal representative thereof, as soon as he shall have completed and filed or mailed the inventory and appraisement in said estate to furnish the attorney general with the following information and file a copy thereof, in the probate proceedings in said estate:

1. The names and addresses of the alien heirs, or devisees and/or legatees in said estate;
2. The share, or proportionate share thereof of each of said alien heirs or devisees;
3. The appraised value of the entire estate."

"91-602. Must procure letters of administration - bond and oath. Whenever a public administrator takes charge of an estate, under order of the court, he must, with all convenient dispatch, procure letters of administration thereon, in like manner and on like proceedings as letters of administration are issued to other persons. His official bond and oath are in lieu of the a administrator's personal representative's bond and oath, but when real estate is ordered to be sold, another bond must may be required by the court." (See 3-603)

"91-614. When to settle with clerk of district court. The public administrator is required to account, under oath, and to settle and adjust his accounts, relating to the care and disbursement of money or property belonging to estates in his hands, with the clerk of the district court, on the first Monday or each month, and he must pay to the county treasurer any money remaining in his hands of an estate unclaimed. 7-as-provided-in-sections-91-4103-to-91-4106-"

91-628. Compensation of public administrator. The public administrator shall receive as full compensation for his services, including attorney's fees, a-commission-of-fifteen-per-cent-(15%)-of-the-total amount-of-money-received-by-him-in-any-estate-provided-for-in-this act the amounts provided for in sections 3-719 and 3-720 of this act; provided that in no case shall the compensation be less than twenty-five dollars (\$25)."

"91-629. Retiring public administrator may close pending estates. The public administrator, upon the expiration or termination of his term of office, may continue to administer estates not closed by filing and presenting to the court, a full and complete account pertaining to each estate not closed, securing an order of court granting him letters of general administration and qualifying himself as a personal representative. general-administrator-under and-pursuant-to-sections-91-1701-and-91-1702,-and-executing-and filing-a-new-bond-in-such-sum-or-sums-as-may-be-fixed-by-the-court-"

"61-631. Adjustment of compensation. Thereupon the court shall determine and allow such predecessor in office, for his services rendered in connection with estates not closed, a compensation based upon the commission now prescribed and allowed by law, in proportion to the services necessarily rendered and those necessary to be rendered by such successor in closing up such estates. Such successor shall thereupon be allowed and paid the balance of such commission allowed. ~~by-said-section-~~"

"91-4414. Exemptions from first \$25,000.

* * *

(2) \$20,000; \$5,000; \$2,000 exempt, when. Property of the clear value of twenty thousand dollars (\$20,000), transferred to the wife or to the husband of the decedent, five thousand dollars (\$5,000) transferred to each minor lineal issue of the decedent, or any minor child adopted as such in conformity with law, or any minor child to whom such decedent for not less than ten (10) years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth (15) birthday, and was continuous for ten (10) years, or any minor lineal issue of such adopted or mutually acknowledged child, and two thousand dollars (\$2,000) transferred to each of the lineal issue who have attained majority and to each of the other persons who have attained majority described in the first subdivision of section 91-4409 shall be exempt. ~~Such exemption to the wife or husband of the decedent shall include all statutory dower, curtesy and other allowances.~~ Any child of the decedent shall be entitled to credit for so much of the tax paid by the wife or husband as applied to any property which shall thereafter be transferred by or from such husband or wife to any such child, provided the husband or wife does not survive said decedent to exceed ten years."

"93-2504. Seizin within five years - when necessary in actions for real property. ~~action-for-dower-~~ No action for the recovery of real property, or for the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question within five years before the commencement of the action. ~~No action for the recovery of dower can be maintained by a widow unless the action is commenced within ten (10) years after the death of her husband-~~"

"93-2604. Within five years. Within five years:

1. An action upon a contract, account, promise, not founded on an instrument in writing.
2. ~~An action to establish a will where the will has been lost, concealed, or destroyed. The cause of action is not deemed to have accrued until the discovery, by the plaintiff, or the person under whom he claims, of the facts upon which its validity depends.~~
3. 2. An action upon a judgement or decree rendered in a court not of record. The cause of action is deemed, in such case, to have accrued when final judgment was rendered." (See 3-108 UPC)

"93-1401-3. Will to be in writing. A last will and testament, ~~except a noncupative will,~~ is invalid, unless it be in writing and executed with such formalities as are required by law. When, therefore, such a will is to be shown, the instrument itself must be produced, or secondary evidence of its contents be given."

STATUTES REMAINING IN FORCE

PAGE 1

TITLE 91

<u>CHAPTER 1</u> 91-105 91-106 91-110 91-111 91-124 91-133 91-142	<u>CHAPTER 10</u> None	<u>CHAPTER 22</u> 91-2206
	<u>CHAPTER 11</u> 91-1100	<u>CHAPTER 23</u> 91-2301 to 91-2304
	<u>CHAPTER 12</u> 91-1203 91-1204	<u>CHAPTER 24</u> None
<u>CHAPTER 2</u> 91-203 to 91-209 91-211 to 91-213 91-218 to 91-224 91-226 91-228 to 91-234	<u>CHAPTER 13</u> None	<u>CHAPTER 25</u> None
<u>CHAPTER 3</u> 91-309 91-318	<u>CHAPTER 14</u> 91-1403	<u>CHAPTER 26</u> None
	<u>CHAPTER 15</u> None	<u>CHAPTER 27</u> 91-2706 91-2713 91-2721 91-2725
<u>CHAPTER 4</u> 91-406 to 91-410	<u>CHAPTER 16</u> None	
<u>CHAPTER 5</u> 91-501 to 91-519 91-523 to 91-526	<u>CHAPTER 17</u> None	<u>CHAPTER 28</u> None
<u>CHAPTER 6</u> 91-601 to 91-622 91-628 to 91-631	<u>CHAPTER 18</u> None	<u>CHAPTER 29</u> None
<u>CHAPTER 7</u> None	<u>CHAPTER 19</u> None	<u>CHAPTER 30</u> None
<u>CHAPTER 8</u> None	<u>CHAPTER 20</u> 91-2001	<u>CHAPTER 31</u> None
<u>CHAPTER 9</u> 91-902 91-904 91-905 to 91-907	<u>CHAPTER 21</u> None	<u>CHAPTER 32</u> 91-3205 91-3207

TITLE 91CHAPTER 33
NoneCHAPTER 34
91-3402 to 91-3404
91-3406CHAPTER 35
NoneCHAPTER 36
NoneCHAPTER 37
NoneCHAPTER 38
NoneCHAPTER 39
NoneCHAPTER 40
NoneCHAPTER 41
NoneCHAPTER 42
91-4201 to 91-4203CHAPTER 43
91-4301 to 91-4310
91-4312
91-4313
91-4317 to 91-4320
91-4323CHAPTER 44
91-4401 to 91-4467CHAPTER 45
91-4509
91-4519
91-4521CHAPTER 46
NoneCHAPTER 47
NoneCHAPTER 48
NoneCHAPTER 49
91-4908CHAPTER 50
NoneCHAPTER 51
NoneCHAPTER 52
91-5206 to 91-5209

Section 91-520 to 91-522 should be reinstated and not repealed because the UPC was amended to deny alien inheritance where there is no reciprocity.



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59601

LUNDY SHOPPING CENTER
MISSOULA HIGHWAY

STATEMENT OF HARRY L. BILLINGS, REPRESENTING THE MONTANA
STATE AFL-CIO, BEFORE THE SENATE JUDICIARY COMMITTEE,
THURSDAY, FEBRUARY 21, 1974:

Chairman McKeon, Members of the Committee:

Mr. Chairman, my name is Harry Billings and I am the Director of Education of the Montana State AFL-CIO. I appear before you today in support of House Bill 557, the Uniform Probate Code, as amended.

Last year, before the Judiciary Committees of both the House and Senate, my organization expressed strong support on behalf of the then-pending House Bill 461, to provide a less costly and time-consuming procedure for the settling of small estates. At the same time, we advised that we also supported enactment of HB 557, the Uniform Probate Code.

It is our understanding that the "joint tenancy and right of survivorship" provision of HB 461 has been substantially incorporated into HB 557.

Simplifying of our complex probate laws, as proposed under HB 557, will be of significant value to thousands of our retired members as well as other elderly Montanans.

Most of our older people are living on limited incomes and the settlement of estates under present laws involves costs that few of them are able to pay without deprivation.

We sincerely hope the Legislature will enact HB 557.

B Section 3-1004, Page 166, Line 1, following the word "certificate," insert the wording:

"OR RECEIPT OF COUNTY TREASURER"

line 7 after the word "Revenue," insert the wording:
"OR a receipt from the County Treasurer."

f Section 3-1205 (2) page 176, line 10
strike the word "interlocutory"

Section 3-1205 (3)(1) page 177, line 8
strike the word "interlocutory"

B Section 3-706, page 116, lines 21 thru 24, after the word "representative," strike the words "may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt." Insert the wording:
"shall appoint at least three qualified and disinterested persons, only two of whom may act, to assist him in ascertaining the fair market value as of the date of the decedent's death of all ^{the} assets included in the estate."

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE SENATE
February 27, 1974

The meeting was called to order by Senator McKeon, chairman, at 4:15 p.m. in Room 442 of the Capitol Building.

The committee discussed the following bills:

HB 224
HB 461
HB 557

HB 224--Senator Turnage said he opposed this bill because it would be giving the out-of-state resident advantages to property in Montana over the in-state resident. The attached letter, addressed to him from Thomas E. Stoll explains his reasoning.

SENATOR TURNAGE MOVED THIS BILL BE NOT CONCURRED IN, SECONDED BY SENATOR MOORE. MOTION CARRIED UNANIMOUSLY.

HB 461--Under the recommendation of Rep. Max Baucus, that if HB 557 was to be concurred in that this be killed, SENATOR TURNAGE MOVED THIS BILL NOTBE CONCURRED IN, SECONDED BY SENATOR HALL. MOTION CARRIED UNANIMOUSLY. Measures of this bill are already included in HB 557.

HB 557--Senator Turnage offered a number of amendments which would clean up inventory problems. The amendment of p. 116, lines 21 through 24, deleting the material after the word "representative" and inserting new material (as per standing committee report) would add present mandatory appraisal laws back into the laws. SENATOR TURNAGE MOVED THE AMENDMENT BE CONCURRED IN, SECONDED BY SEN. GILFEATHER. MOTION CARRIED. The amendments on page 117, line 5, striking "or" and inserting "and", and on line 5 striking the word "may" and inserting "shall" deals with the "critical areas of succession", requires that person to file with the court and state. SENATOR TURNAGE MOVED THE AMENDMENTS BE CONCURRED IN, SECONDED BY SENATOR GILFEATHER. MOTION CARRIED. The last amendment on page 242, changing the effective date to July 1, 1974, was made so that those persons who had other proposed amendments would have an opportunity to have them included, to allow time to study and cleanup the bill further, and, also, during the interim, a training school will be established for clerks in the court. SENATOR TURNAGE MOVED THE AMENDMENT BE CONCURRED IN, SECONDED BY SENATOR MOORE. MOTION CARRIED.

SENATOR TURNAGE MOVED THIS BILL BE CONCURRED IN AS AMENDED, SECONDED BY SENATOR GILFEATHER. MOTION CARRIED UNANIMOUSLY.

No further business, the meeting was adjourned to reconvene Thursday, February 28 at 11 a.m.



LUKE MCKEON, Chairman

ROLL CALL

SENATE JUDICIARY COMMITTEE

SECOND HALF - 43rd LEGISLATIVE SESSION 1974

Date 2-27

NAME	PRESENT	ABSENT	EXCUSED
Luke McKeon	✓		
Pat Gilfeather	✓		
Paul Boylan	✓		
Mrs. Boots Hall	✓		
Miles Romney	✓		
Glenn Drake	✓		
Tom Harrison			✓
Jim Moore	✓		
Jean Turnage	✓		

of any other law, the provisions of this act shall be controlling. The method of annexation authorized in this act shall be construed as supplemental to and independent from other methods of annexation authorized by state law.

Approved March 29, 1974

CHAPTER NO. 365

AN ACT TO BE KNOWN AS THE "UNIFORM PROBATE CODE" RELATING TO AFFAIRS OF DECEDENTS, MISSING PERSONS, PROTECTED PERSONS, MINORS, INCAPACITATED PERSONS AND CERTAIN OTHERS; CONSOLIDATING AND REVISING THE LAW RELATING TO WILLS AND INTESTACY AND THE ADMINISTRATION AND DISTRIBUTION OF ESTATES OF DECEDENTS, MISSING PERSONS, PROTECTED PERSONS, MINORS, INCAPACITATED PERSONS AND CERTAIN OTHERS; ORDERING THE POWERS AND PROCEDURES OF THE COURT CONCERNED WITH THE AFFAIRS OF DECEDENTS AND CERTAIN OTHERS; PROVIDING FOR THE TERMINATION OF JOINT TENANCIES AND LIFE ESTATES; REPEALING SECTIONS 22-101 THROUGH 22-117, 91-101, 91-102, 91-107, 91-108, 91-113 THROUGH 91-116, 91-122, 91-125 THROUGH 91-130, 91-135 THROUGH 91-139, 91-141, 91-201, 91-210, 91-214 THROUGH 91-217, 91-227, 91-235, 91-301, 91-303, 91-304, 91-307, 91-308, 91-311 THROUGH 91-314, 91-317, 91-319, 91-321, 91-402 THROUGH 91-405, 91-411 THROUGH 91-418, 91-423 THROUGH 91-430, 91-520 THROUGH 91-522, 91-612A, 91-612B, 91-701, 91-702, 91-801 THROUGH 91-811, 91-901, 91-904, 91-1001 THROUGH 91-1003, 91-1101 THROUGH 91-1105, 91-1107, 91-1301 THROUGH 91-1303, 91-1305 THROUGH 91-1312, 91-1401, 91-1402, 91-1404 THROUGH 91-1406, 91-1501 THROUGH 91-1509, 91-1601 THROUGH 91-1604, 91-1701 THROUGH 91-1723, 91-1801 THROUGH 91-1807, 91-1901 THROUGH 91-1906, 91-2002 THROUGH 91-2004, 91-2101 THROUGH 91-2105, 91-2201 THROUGH 91-2204, 91-2207 THROUGH 91-2213, 91-2401 THROUGH 91-2407, 91-2501 THROUGH 91-2507, 91-2601 THROUGH 91-2612, 91-2701 THROUGH 91-2705, 91-2707 THROUGH 91-2712, 91-2715 THROUGH 91-2720, 91-2723, 91-2724, 91-2801 THROUGH 91-2810, 91-2901, 91-2902, 91-3001 THROUGH 91-3039, 91-3101 THROUGH 91-3109, 91-3201 THROUGH 91-3204, 91-3209 THROUGH 91-3212, 91-3301 THROUGH 91-3313, 91-3405, 91-3407, 91-3601 THROUGH 91-3608, 91-3701 THROUGH 91-3706, 91-3801 THROUGH 91-3803, 91-3901 THROUGH 91-3907, 91-4001 THROUGH 91-4012, 91-4101 THROUGH 91-4106, 91-4311, 91-4314 THROUGH 91-4316, 91-4321, 91-4322, 91-4501 THROUGH 91-4508, 91-4510 THROUGH 91-4518, 91-4522 THROUGH 91-4525, 91-4601 THROUGH 91-4604, 91-4606 THROUGH 91-4608, 91-4610, 91-4611, 91-4701 THROUGH 91-4706, 91-4801 THROUGH 91-4822, 91-4901 THROUGH 91-4904, 91-4906, 91-4907, 91-4909 THROUGH 91-4911, 91-5001 THROUGH 91-5007, 91-5101 THROUGH 91-5111, 91-5202, 91-5203, 91-5210, 91-5301 THROUGH 91-5312, AND

93-1404.4, R.C.M. 1947; AND AMENDING SECTIONS 91-131, 91-218, 91-612, 91-1106, 91-3406, 91-4411, 91-4417, 91-4423, 91-4430, 91-4437, 91-4438, 91-4448, AND 91-4467, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1.

GENERAL PROVISIONS, DEFINITIONS, AND PROBATE JURISDICTION OF COURT SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

Section 91A-1-101. **Short title.** This act shall be known and may be cited as the Uniform Probate Code.

Section 91A-1-102. **Purposes; rules of construction.** (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this code are:

(a) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;

(b) to discover and make effective the intent of a decedent in distribution of his property;

(c) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to its successors;

(d) to make uniform the law among the various jurisdictions.

Section 91A-1-103. **Supplementary general principles of law applicable.** Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

Section 91A-1-104. **Severability.** If any provision of this code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Section 91A-1-105. **Construction against implied repeal.** This code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

Section 91A-1-106. **Effect of fraud and evasion.** Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief including restitution against the perpetrator of the fraud or any person benefitting from the fraud, whether innocent or not (other than a bona fide purchaser for value and without notice). Any proceeding must be commenced within two (2) years after the discovery of

the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five (5) years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

Section 91A-1-107. Evidence as to death or status. In proceedings under this code the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by the code. In addition, the following rules relating to determination of death and status are applicable:

(1) a certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent;

(2) a certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;

(3) a person who is absent for a continuous period of seven (7) years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

Section 91A-1-108. Acts by holder of general power. For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative, including relief from liability or penalty for failure to post bond, or to perform other duties the sole holder or all coholders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

DEFINITIONS

Section 91A-1-201. General definitions. Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in this code:

(1) "Application" means a written request to the clerk for an order of informal probate or appointment under sections 91A-3-301 through 91A-3-309, inclusive.

(2) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

(3) "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved.

(4) "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(5) "Clerk" or "clerk of court" means the clerk of the district court.

(6) "Court" means the court having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as district court.

(7) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(8) "Devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

(9) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(10) "Disability" means cause for a protective order as described by section 91A-5-401.

(11) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(12) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this code as originally constituted and as it exists from time to time during administration.

(13) "Exempt property" means that property of a decedent's estate which is described in section 91A-2-402.

(14) "Fiduciary" includes personal representative, guardian, conservator and trustee.

(15) "Foreign personal representative" means a personal representative of another jurisdiction.

(16) "Formal proceedings" means those conducted before a judge with notice to interested persons.

(17) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(18) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(19) "Incapacitated person" is as defined in section 91A-5-101.

(20) "Informal proceedings" mean those conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

(21) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(22) "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.

(23) "Lease" includes an oil, gas, coal or other mineral lease.

(24) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(25) "Minor" means a person who is under eighteen (18) years of age.

(26) "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.

(27) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal entity.

(29) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question.

(30) "Person" means an individual, a corporation, an organization, or other legal entity.

(31) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(32) "Petition" means a written request to the court for an order after notice.

(33) "Proceeding" includes action at law and suit in equity.

(34) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(35) "Protected person" is as defined in section 91A-5-101.

(36) "Protective proceeding" is as defined in section 91A-5-101.

(37) "Securities" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(38) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution and closing.

(39) "Special administrator" means a personal representative as described by sections 91A-3-614 through 91A-3-618.

(40) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(41) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(42) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under his will or this code.

(43) "Supervised administration" refers to the proceedings described in sections 91A-3-501 through 91A-3-505 inclusive.

(44) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(45) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, custodial arrangements pursuant to Title 67, chapter 18, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(46) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(47) "Ward" is as defined in section 91A-5-101.

(48) "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

SCOPE, JURISDICTION AND COURTS

Section 91A-1-301. **Territorial application.** Except as otherwise provided in this code, this code applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected in this state,

(2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state, and

(3) incapacitated persons and minors in this state.

Section 91A-1-302. **Subject matter jurisdiction.** (1) To the full extent permitted by the constitution, the court has jurisdiction over all subject matter relating to

(a) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons; and

(b) protection of minors and incapacitated persons.

(2) The court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

Section 91A-1-303. **Venue; multiple proceedings; transfer.** (1) where venue for a proceeding under this code may lie in more than one county in the state, the court in which the proceeding is first commenced has the exclusive right to proceed.

(2) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one (1) court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(3) If a court finds that as a matter of law or in the interest of justice a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

Section 91A-1-304. **Practice in court.** Unless specifically provided to the contrary in this code or unless inconsistent with its provisions, the rules of civil procedure including the rules concerning vacation of orders and appellate review govern formal proceedings under this code.

Section 91A-1-305. **Records and certified copies.** The clerk of court shall keep a record for each decedent, ward, protected person or trust involved in any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, and of any orders or responses relating thereto by the clerk or court, and establish and maintain a system for indexing, filing or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or

any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

Section 91A-1-306. **Jury trial.** (1) If duly demanded, a party is entitled to trial by jury in a formal testacy proceeding, a formal proceeding for determination of heirship and any other proceeding as may be provided for by law.

(2) If there is no right to trial by jury under subsection (1) or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.

Section 91A-1-307. **Clerk of court; powers.** The acts and orders which this code specifies as performable by the clerk of court may be performed either by a judge of the court or by the clerk of court.

Section 91A-1-308. **Appeals.** Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments and power of the appellate court, is governed by the statutes and rules applicable to the appeals to the Supreme Court.

Section 91A-1-309. **Oath or affirmation on filed documents.** Except as otherwise specifically provided in this code or by rule, every document filed with the court under this code including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed; deliberate falsification therein shall constitute the offense of false swearing.

NOTICE, PARTIES AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

Section 91A-1-401. **Notice; method and time of giving.** (1) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(a) by mailing a copy thereof at least fourteen (14) days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known;

(b) by delivering a copy thereof to the person being notified personally at least fourteen (14) days before the time set for the hearing; or

(c) if the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing at least once a week for three (3) consecutive weeks, a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least ten (10) days before the time set for the hearing.

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

Section 91A-1-402. Notice; waiver. A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding.

Section 91A-1-403. Pleadings; when parties bound by others; notice. In formal proceedings involving trusts or estate of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:

(1) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(b) To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent his minor child.

(c) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Notice is required as follows:

(a) Notice as prescribed by section 91A-1-401 shall be given to every interested person or to one who can bind an interested person as described in (2)(a) or (2)(b) above. Notice may be given both to a person and to another who may bind him.

(b) Notice is given to unborn or unascertained persons, who are not represented under (2)(a) or (2)(b) above, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad

litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

INTESTATE SUCCESSION AND WILLS INTESTATE SUCCESSION

Section 91A-2-101. Intestate estate. Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this code.

Section 91A-2-102. Share of spouse. The intestate share of the surviving spouse is:

(1) if there is no surviving issue, the entire intestate estate;

(2) if there are surviving issue all of whom are issue of the surviving spouse also, the first fifty thousand dollars (\$50,000), plus one-half (½) of the balance of the intestate estate;

(3) if there are surviving issue one (1) or more of whom are not issue of the surviving spouse, one-half (½) of the intestate estate.

Section 91A-2-103. Share of heirs other than surviving spouse. The part of the intestate estate not passing to the surviving spouse under section 91A-2-102, or the entire intestate estate if there is no surviving spouse, passes as follows:

(1) to the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;

(2) if there is no surviving issue, to his parent or parents equally;

(3) if there is no surviving issue or parent, to the brothers and sisters and the issue of each deceased brother or sister by representation; if there is no surviving brother or sister, the issue of brothers and sisters take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree then those of more remote degree take by representation;

(4) if there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half;

(5) if there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, the estate passes to the next of kin, in equal degree, except that where there are two (2) or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the nearer ancestors must be preferred to those claiming through an ancestor more remote.

Section 91A-2-104. Requirement that heir survive decedent for one hundred twenty (120) hours. Any person who fails to survive the decedent by one hundred twenty (120) hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by one hundred twenty (120) hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the state under section 91A-2-105.

Section 91A-2-105. No taker. If there is no taker under the provisions of sections 91A-2-102 and 91A-2-103 the intestate estate passes to the state of Montana.

Section 91A-2-106. Representation. If representation is called for by this code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one (1) share and the share of each deceased person in the same degree being divided among his issue in the same manner.

Section 91A-2-107. Kindred of half blood. Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

Section 91A-2-108. Afterborn heirs. Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent.

Section 91A-2-109. Meaning of child and related terms. If, for the purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

- (1) An adopted person shall inherit as the child of an adopting parent.
- (2) In cases not covered by (1), a person born out of wedlock is a child of the mother. That person is also a child of the father, if:
 - (a) the natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or
 - (b) the paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this subparagraph (b) is ineffective to qualify the father or his kindred to inherit from or through

the child unless the father has openly treated the child as his, and has not refused to support the child.

Section 91A-2-110. Advancements. If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

Section 91A-2-111. Alienage. No person is disqualified to take as an heir because he or a person through whom he claims is an alien unless the country in which he resides does not allow reciprocity.

Section 91A-2-112. Dower and curtesy abolished. The estates of dower and curtesy are abolished.

ELECTIVE SHARE OF SURVIVING SPOUSE

Section 91A-2-201. Right to elective share. (1) If a married person domiciled in this state dies, the surviving spouse has a right of election to take an elective share of one-third ($\frac{1}{3}$) of the augmented estate under the limitations and conditions hereinafter stated.

(2) If a married person not domiciled in this state dies, the right, if any, of the surviving spouse to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

Section 91A-2-202. Augmented estate. The augmented estate means the estate reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

(1) The value of property transferred by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

- (a) any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property;
- (b) any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit;
- (c) any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;
- (d) any transfer made within three (3) years of death of the decedent

to the extent that the aggregate transfers to any one donee in any of the years exceed three thousand dollars (\$3,000).

(2) Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

(3) The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includible in the spouse's augmented estate if the surviving spouse had predeceased the decedent, to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection:

(a) Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of the federal social security system, by reason of service performed or disabilities incurred by the decedent, and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent.

(b) Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(c) Property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.

Section 91A-2-203. **Right of election personal to surviving spouse.** The right of election of the surviving spouse may be exercised only by him. In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his

property are pending, after finding that exercise is necessary to provide adequate support for the protected person during his probable life expectancy.

Section 91A-2-204. **Waiver of right to elect and of other rights.** The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

Section 91A-2-205. **Proceeding for elective share; time limit.** (1) The surviving spouse may elect to take his elective share in the augmented net estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within six (6) months after the first publication of notice to creditors for filing claims which arose before the death of the decedent, or within one year of the date of death, whichever time limitation first expires. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

(2) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be adversely affected by the taking of the elective share.

(3) The surviving spouse may withdraw his demand for an elective share at any time before entry of a final determination by the court.

(4) After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the augmented net estate or by contribution as appears appropriate under section 91A-2-207. If it appears that a fund or property included in the augmented net estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

Section 91A-2-206. **Effect of election on benefits by will or statute.**

(1) The surviving spouse's election of his elective share does not affect the share of the surviving spouse under the provisions of the decedent's will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to contribution under subsection 91A-2-207(2), as if the surviving spouse had predeceased the testator.

(2) A surviving spouse is entitled to homestead allowance, exempt property and family allowance whether or not he elects to take an elective share.

Section 91A-2-207. Charging spouse with property received; liability of others for balance of elective share. (1) In the proceeding for an elective share, property which is part of the augmented estate which passes or has passed to the surviving spouse by testate or intestate succession or other means and which has not been renounced, including that described in section 91A-2-202(3), is applied first to satisfy the elective share and to reduce the amount due from other recipients of portions of the augmented estate.

(2) Remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interests therein.

(3) Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate.

SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

Section 91A-2-301. Omitted spouse. (1) If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(2) In satisfying a share provided by this section, the devises made by the will abate as provided in section 91A-3-902.

Section 91A-2-302. Pretermitted children. (1) If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

(a) it appears from the will that the omission was intentional;

(b) when the will was executed the testator had one (1) or more children and devised substantially all his estate to the other parent of the omitted child; or

(c) the testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(2) If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

(3) In satisfying a share provided by this section, the devises made by the will abate as provided in section 91A-3-902.

EXEMPT PROPERTY AND ALLOWANCES

Section 91A-2-401. Homestead allowance. (1) A surviving spouse of a decedent who was domiciled in this state is entitled to a homestead allowance as provided in sections 33-101 through 33-129, R.C.M. 1947. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance as provided in sections 33-101 through 33-129, R.C.M. 1947, divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share.

(2) If no homestead has been selected, designated and recorded prior to the decedent's death, the personal representative shall select, designate, set apart and cause to be recorded a homestead for the use of the surviving spouse and minor children and this section shall take effect as if the homestead had been declared before the decedent's death.

Section 91A-2-402. Exempt property. In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled in this state is entitled from the estate to value not exceeding three thousand five hundred dollars (\$3,500) in excess of any security interests therein in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than three thousand five hundred dollars (\$3,500), or if there is not three thousand five hundred dollars (\$3,500) worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the three thousand five hundred dollars (\$3,500) value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or child.

dren by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

Section 91A-2-403. **Family allowance.** In addition to the right to homestead allowance and exempt property, if the decedent was domiciled in this state, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one (1) year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead allowance.

The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates his right to allowances not yet paid.

Section 91A-2-404. **Source, determination and documentation.** If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. He may determine the family allowance in a lump sum not exceeding six thousand dollars (\$6,000) or periodic installments not exceeding five hundred dollars (\$500) per month for one (1) year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

Section 91A-2-405. **Allowances and exempt property included in inheritance tax exemption.** The allowances and exempt property provided for in sections 91A-2-401 through 91A-2-403 are to be included in computing the exemptions from inheritance tax provided for in section 91-4414 and are not in addition to such inheritance tax exemptions.

WILLS

Section 91A-2-501. **Who may make a will.** Any person eighteen (18)

or more years of age who is of sound mind may make a will.

Section 91A-2-502. **Execution.** Except as provided for holographic wills, writings within section 91A-2-513, and wills within section 91A-2-506, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction, and shall be signed by at least two (2) persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

Section 91A-2-503. **Holographic will.** A will which does not comply with section 91A-2-502 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

Section 91A-2-504. **Self-proved will.** An attested will may at the time of its execution or at any subsequent date be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this state, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

THE STATE OF

COUNTY OF

We,, and, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and to the best of his knowledge the testator was at that time 18 or more years of age, of sound mind and under no constraint or undue influence.

..... Testator

..... Witness

..... Witness

Subscribed, sworn to and acknowledged before me by, the testator, and subscribed and sworn to before me by and, witnesses, this day of,

(SEAL)

(Signed)....

.....(Official capacity of officer)

Section 91A-2-505. **Who may witness; effect of witness by beneficiary.** (1) Any person generally competent to be a witness may act as a witness to a will.

(2) A will is not invalid because the will is signed by an interested witness.

(3) All beneficial devises made in any will to a subscribing witness thereto, are void, unless there are two (2) other competent subscribing witnesses to the same; but a mere charge on the estate of the testator does not prevent his creditors from being competent witnesses to his will.

(4) If a witness, to whom any beneficial devise, void under the preceding section, is made, would have been entitled to any share of the estate of the testator if the testator had died intestate, such witness succeeds to so much of the share as would be distributed to him under intestate succession, not exceeding the devise or bequest made to him in the will.

Section 91A-2-506. Choice of law as to execution. A written will is valid if executed in compliance with section 91A-2-502 or 91A-2-503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national.

Section 91A-2-507. Revocation by writing or by act. A will or any part thereof is revoked (1) by a subsequent will which revokes the prior will or part expressly or by inconsistency; or

(2) by being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

Section 91A-2-508. Revocation by divorce or annulment; no revocation by other change in circumstances. If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of section 91A-2-802(2). A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

Section 91A-2-509. Revival of revoked will. (1) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under section 91A-2-507, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.

(2) If a second will which, had it remained effective at death, would

have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

Section 91A-2-510. Incorporation by reference. Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

Section 91A-2-511. Testamentary additions to trusts. A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) if the trust is identified in the testator's will and its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator (regardless of the existence, size, or character of the corpus of the trust). The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given and shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator (regardless of whether made before or after the execution of the testator's will), and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator causes the devise to lapse.

Section 91A-2-512. Events of independent significance. A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

Section 91A-2-513. Separate writing identifying bequest of tangible property. Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.

RULES OF CONSTRUCTION

Section 91A-2-601. **Requirement that devisee survive testator by one hundred twenty (120) hours.** A devisee who does not survive the testator by one hundred twenty (120) hours is treated as if he predeceased the testator, unless the will of decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

Section 91A-2-602. **Choice of law as to meaning and effect of wills.** The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the public policy of this state otherwise applicable to the disposition.

Section 91A-2-603. **Rules of construction and intention.** The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this part apply unless a contrary intention is indicated by the will.

Section 91A-2-604. **Construction that will passes all property; after-acquired property.** A will is construed to pass all property which the testator owns at his death including property acquired after the execution of the will.

Section 91A-2-605. **Anti-lapse; deceased devisee; class gift.** If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by one hundred twenty (120) hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree then those of more remote degree take by representation. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.

Section 91A-2-606. **Failure of testamentary provision.** (1) Except as provided in section 91A-2-605 if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(2) Except as provided in section 91A-2-605 if the residue is devised to two (2) or more persons and the share of one (1) of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

Section 91A-2-607. **Change in securities; accessions; nonademption.** (1) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(a) as much of the devised securities as is a part of the estate at time of the testator's death;

(b) any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity;

(c) securities of another entity owned by the testator as a result of a merger, consolidation, reorganization or other similar action initiated by the entity; and

(d) any additional securities of the entity owned by the testator as a result of a plan of reinvestment if it is a regulated investment company.

(2) Distributions prior to death with respect to a specifically devised security not provided for in subsection (1) are not part of the specific devise.

Section 91A-2-608. **Nonademption of specific devises in certain cases; sale by conservator; unpaid proceeds of sale, condemnation or insurance.** (1) If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a pecuniary devise equal to so much of the sale price, condemnation award or insurance proceeds as remains in the estate and is identifiable at the time of the decedent's death.

This subsection does not apply if subsequent to the sale, condemnation, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one (1) year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (2).

(2) A specific devisee has the right to the remaining specifically devised property and:

(a) any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the taking of the property unpaid at death;

(c) any proceeds unpaid at death on fire or casualty insurance on the property; and

(d) property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

Section 91A-2-609. **Non-exoneration.** A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

Section 91A-2-610. **Exercise of power of appointment.** A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

Section 91A-2-611. **Construction of generic terms to accord with relationships as defined for intestate succession.** Halfbloods, adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession.

Section 91A-2-612. **Ademption by satisfaction.** Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

CONTRACTUAL ARRANGEMENTS RELATING TO DEATH

Section 91A-2-701. **Contracts concerning succession.** A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this act, can be established only by (1) provisions of a will stating material provisions of the contract;

(2) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

(3) a writing signed by the decedent evidencing the contract.

The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

GENERAL PROVISIONS

Section 91A-2-801. **Renunciation of succession.** (1) A person (or his personal representative) who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument or person designated to take pursuant to a power of appointment exercised by a testamentary instrument may renounce in whole or in part the succession to any property or interest therein by filing a written instrument within the time and at the place hereinafter provided. The instrument shall

- (a) describe the property or part thereof or interest therein renounced,
- (b) be signed by the person renouncing, and
- (c) declare the renunciation and the extent thereof.

(2) The writing specified in (1) must be filed within six (6) months after the death of the decedent or the donee of the power, or if the taker of the property is not then finally ascertained not later than six (6) months after the event by which the taker or the interest is finally ascertained. The writing must be filed in the court of the county where proceedings concerning the decedent's estate are pending, or where they would be pending if commenced. A copy of the writing also shall be mailed to the personal representative of the decedent.

(3) Unless the decedent or donee of the power has otherwise indicated by his will, the interest renounced, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person renouncing had predeceased the decedent, or if the person renouncing is one designated to take pur-

suant to a power of appointment exercised by a testamentary instrument, as if the person renouncing had predeceased the donee of the power. In every case the renunciation relates back for all purposes to the date of death of the decedent or the donee, as the case may be.

(4) Any assignment, conveyance, encumbrance, pledge or transfer of property therein or any contract therefor, written waiver of the right to renounce or any acceptance of property by an heir, devisee, person succeeding to a renounced interest, beneficiary or person designated to take pursuant to a power of appointment exercised by testamentary instrument, or sale or other disposition of property pursuant to judicial process, made before the expiration of the period in which he is permitted to renounce, bars the right to renounce as to the property.

(5) The right to renounce granted by this section exists irrespective of any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(6) This section does not abridge the right of any person to assign, convey, release, or renounce any property arising under any other section of this code or other statute.

(7) Any interest in property which exists on the effective date of this section, but which has not then become indefeasibly fixed both in quality and quantity, or the taker of which has not then become finally ascertained, may be renounced after the effective date of this section as provided herein. An interest which has arisen prior to the effective date of this section in any person other than the person renouncing is not destroyed or diminished by any action of the person renouncing taken under this section.

Section 91A-2-802. **Effect of divorce, annulment and decree of separation.** (1) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(2) For purposes of sections 91A-2-101 through 91A-2-404 and of 91A-3-203, a surviving spouse does not include:

- (a) a person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife;
- (b) a person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or
- (c) a person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

Section 91A-2-803. **Effect of homicide on intestate succession, wills, joint assets, life insurance and beneficiary designations.** (1)

A surviving spouse, heir or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this article, and the estate of decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(2) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(4) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(5) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

(6) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

CUSTODY AND DEPOSIT OF WILLS

Section 91A-2-901. **Deposit of will with court for safekeeping.** A will may be deposited by the testator or his agent with any court for safekeeping, under rules of the court. The will shall be kept confidential. During the testator's lifetime a deposited will shall be delivered only to him or to a person authorized in writing signed by him to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible, and to assure that it will be resealed and left on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to him on request; or the court may deliver the will to the appropriate court.

Section 91A-2-902. **Duty of custodian of will; liability.** After the

death of a testator and on request of an interested person, any person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and if none is known, to an appropriate court. Any person who willfully fails to deliver a will is liable to any person aggrieved for the damages which may be sustained by the failure. Any person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

PROBATE OF WILLS AND ADMINISTRATION GENERAL PROVISIONS

Section 91A-3-101. **Devolution of estate at death; restrictions.** The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates. Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.

Section 91A-3-102. **Necessity of order of probate for will.** Except as provided in section 91A-3-1201, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the clerk, or an adjudication of probate by the court, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if (1) no court proceeding concerning the succession or administration of the estate has occurred, and

(2) either the devisee or his successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

Section 91A-3-103. **Necessity of appointment for administration.** Except as otherwise provided in sections 91A-4-101 through 91A-4-401, inclusive, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or clerk, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.

Section 91A-3-104. **Claims against decedent; necessity of administration.** No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by sections 91A-3-101 through 91A-3-1203. After distribution a creditor whose claim has not been barred

may recover from the distributees as provided in section 91A-3-1005 or from a former personal representative individually liable as provided in section 91A-3-1006. This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

Section 91A-3-105. Proceedings affecting devolution and administration; jurisdiction of subject matter. Persons interested in decedents' estate may apply to the clerk for determination in the informal proceedings provided in sections 91A-3-301 through 91A-3-311 of this act, and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in sections 91A-3-401 through 91A-3-505 of this act. The district court has exclusive jurisdiction of all probate matters.

Section 91A-3-106. Proceedings within exclusive jurisdiction of court. In proceedings within the exclusive jurisdiction of the court where notice is required by this code or by rule, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this state by notice in conformity with section 91A-1-401. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

Section 91A-3-107. Scope of proceedings; proceedings independent; exception. Unless supervised administration as described in sections 91A-3-501 through 91A-3-505 is involved, (1) each proceeding before the court or clerk is independent of any other proceeding involving the same estate;

(2) petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this code, no petition is defective because it fails to embrace all matters which might then be the subject of a final order;

(3) proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and

(4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

Section 91A-3-108. Probate, testacy and appointment proceedings; time limit; exception. No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three (3) years after the decedent's death, except (1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(2) appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed, at any time within three (3) years after the conservator becomes able to establish the death of the protected person; and

(3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of twelve (12) months from the informal probate or three (3) years from the decedent's death.

These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate, nor do they limit the right of interested persons to commence informal probate or appointment proceedings or formal testacy or appointment proceedings at any time after three (3) years from the decedent's death if there have been no previous formal or informal probate or appointment proceedings commenced in respect of that decedent. In cases under (1) or (2) above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death.

Section 91A-3-109. Statutes of limitation on decedent's cause of action. No statute of limitation running on a cause of action belonging to a decedent which had not been barred as of the date of his death, shall apply to bar a cause of action surviving the decedent's death sooner than four (4) months after death. A cause of action which, but for this section, would have been barred less than four (4) months after death, is barred after four (4) months unless tolled.

VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR NOTICE

Section 91A-3-201. Venue for first and subsequent estate proceedings; location of property. (1) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(a) in the county where the decedent had his domicile at the time of his death; or

(b) if the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of his death.

(2) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in section 91A-1-303 or (3) of this section.

(3) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(4) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving nondomiciliaries, a debt,

other than one evidenced by investment or commercial paper or other instrument in favor of a nondomiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

Section 91A-3-202. **Appointment or testacy proceedings; conflicting claim of domicile in another state.** If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this state, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state must stay, dismiss, or permit suitable amendment in, the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this state.

Section 91A-3-203. **Priority among persons seeking appointment as personal representative.** (1) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

- (a) the person with priority as determined by a probated will including a person nominated by a power conferred in a will;
- (b) the surviving spouse of the decedent who is a devisee of the decedent;
- (c) other devisees of the decedent;
- (d) the surviving spouse of the decedent;
- (e) other heirs of the decedent;
- (f) public administrator;
- (g) forty-five (45) days after the death of the decedent, any creditor.

(2) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in (1) apply except that

(a) if the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;

(b) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value, or, in default of this accord any suitable person.

(3) A person entitled to letters under (b) through (e) of (1) above, may nominate a qualified person to act as personal representative. Any person entitled to letters may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two (2) or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them, or in applying for appointment.

(4) Conservators of the estates of protected persons, or if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

(5) Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.

(6) No person is qualified to serve as a personal representative who is:

- (a) under the age of eighteen (18);
- (b) a person whom the court finds unsuitable in formal proceedings.

(7) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

(8) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

Section 91A-3-204. **Demand for notice of order or filing concerning decedent's estate.** Any person desiring notice of any order or filing pertaining to a decedent's estate in which he has a financial or property interest, may file a demand for notice with the court at any time after the death of the decedent stating the name of the decedent, the nature of his interest in the estate, and the demandant's address or that of his attorney. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in section 91A-1-401 to the demandant or his attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.

INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

Section 91A-3-301. Informal probate or appointment proceedings; application; contents. Applications for informal probate or informal appointment shall be directed to the clerk, and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the following information:

(1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special, ancillary or successor representative, shall contain the following:

- (a) a statement of the interest of the applicant;
- (b) the name and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;
- (c) if the decedent was not domiciled in the state at the time of his death, a statement showing venue;
- (d) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;
- (e) a statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

(2) An application for informal probate of a will shall state the following in addition to the statements required by (1):

- (a) that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;
- (b) that the applicant, to the best of his knowledge, believes the will to have been validly executed;
- (c) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will;
- (d) that the time limit for informal probate as provided in this article has not expired either because three (3) years or less have passed since the decedent's death, or, if more than three (3) years from death have passed, that circumstances as described by section 91A-3-108 authorizing tardy probate have occurred.

(3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.

(4) An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by (1):

- (a) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under section 91A-1-301, or, a statement why any such instrument of which he may be aware is not being probated;
- (b) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 91A-3-203.

(5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section 91A-3-610(3), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

Section 91A-3-302. Informal probate; duty of clerk of court; effect of informal. Upon receipt of an application requesting informal probate of a will, the clerk, upon making the findings required by section 91A-3-303 shall issue a written statement of informal probate if at least one hundred twenty (120) hours have elapsed since the decedent's death. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

Section 91A-3-303. Informal probate; proof and findings required. (1) In an informal proceeding for original probate of a will, the clerk shall determine whether:

- (a) the application is complete;
- (b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;
- (c) the applicant appears from the application to be an interested person as defined in section 91A-1-201(21);
- (d) on the basis of the statements in the application, venue is proper;
- (e) an original, duly executed and apparently unrevoked will is in the clerk's possession;
- (f) any notice required by section 91A-3-204 has been given and that the application is not within section 91A-3-304; and

(g) it appears from the application that the time limit for original probate has not expired.

(2) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or except as provided in subsection (4) below, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under section 91A-2-502, 91A-2-503 or 91A-2-506 have been met and that it is self-proved as provided by section 91A-2-504 shall be probated without further proof. In other cases the clerk shall admit the will to probate on the following proof:

(a) on the testimony of one of the subscribing witnesses that the will was executed as required by this code and that the testator was of sound mind at the time of its execution;

(b) if it appears at the time of the filing of the application to have the will informally admitted to probate that none of the subscribing witnesses reside in the county or are capable of appearing and that the sworn or affirmed statement of one of the witnesses to the will has been taken or can be taken within the state within the next ten (10) days, the clerk shall admit the will to probate on the sworn or affirmed written statement of such witness that he has examined the original or a photostatic copy of the will, that he recognizes it as the will of the decedent witnessed by him on the date stated, that the will was executed in all particulars as required by law and that the testator was of sound mind at the time;

(c) if none of the subscribing witnesses reside in the county and are capable of testifying at the time of the application for informal probate and the execution of the will cannot be proved under either of the foregoing subdivisions, the clerk may accept the sworn or affirmed statement or affidavit of any person having knowledge of the circumstances of the execution, and may accept proof of the handwriting of the testator and of the subscribing witnesses or any of them.

(4) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(5) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (1) above, may be probated in this state upon receipt by the clerk of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

Section 91A-3-304. Informal probate unavailable in certain cases. Application for informal probate which relate to one (1) or more of a known series of testamentary instruments (other than wills and codicils), the latest of which does not expressly revoke the earlier, shall be declined.

Section 91A-3-305. Informal probate; clerk not satisfied. If the clerk is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of sections 91A-3-303 and 91A-3-304 or any other reason, he may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

Section 91A-3-306. Informal probate; notice requirements. The moving party must give notice as described by section 91A-1-401 of his application for informal probate (1) to any person demanding it pursuant to section 91A-3-204; and

(2) to any personal representative of the decedent whose appointment has not been terminated.

No other notice of informal probate is required.

Section 91A-3-307. Informal appointment proceedings; delay in order; duty of clerk; effect of appointment. (1) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in section 91A-3-614, if at least one hundred twenty (120) hours have elapsed since the decedent's death, the clerk, after making the findings required by section 91A-3-308, shall appoint the applicant subject to qualification and acceptance; provided, that if the decedent was a nonresident, the clerk shall delay the order of appointment until thirty (30) days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this state.

(2) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to termination as provided in sections 91A-3-608 through 91A-3-612, but is not subject to retroactive vacation.

Section 91A-3-308. Informal appointment proceedings; proof and findings required. (1) In informal appointment proceedings, the clerk must determine whether:

(a) the application for informal appointment of a personal representative is complete;

(b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(c) the applicant appears from the application to be an interested person as defined in section 91A-1-201(21);

(d) on the basis of the statements in the application, venue is proper;

(e) any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;

(f) any notice required by section 91A-3-204 has been given;

(g) from the statements in the application, the person whose appointment is sought has priority entitling him to the appointment.

(2) Unless section 91A-3-612 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in section 91A-3-610(3) has been appointed in this or another county of this state, that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

Section 91A-3-309. Informal appointment proceedings; clerk not satisfied. If the clerk is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of sections 91A-3-307 and 91A-3-308, or for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

Section 91A-3-310. Informal appointment proceedings; notice requirements. The moving party must give notice as described by section 91A-1-401 of his intention to seek an appointment informally: (1) to any person demanding it pursuant to section 91A-3-204; and

(2) to any person having a prior or equal right to appointment not waived in writing and filed with the court. No other notice of an informal appointment proceeding is required.

Section 91A-3-311. Informal appointment proceedings; unavailable in certain cases. If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this state, and which is not filed for probate in this court, the clerk shall decline the application.

FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

Section 91A-3-401. Formal testacy proceedings; nature; when commenced. A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in section 91A-3-402(1) in which he requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition for an order that the decedent died intestate.

A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

During the pendency of a formal testacy proceeding, the clerk shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

Section 91A-3-402. Formal testacy or appointment proceedings; petition; contents. (1) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing and contain further statements as indicated in this section. A petition for formal probate of a will

(a) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs,

(b) contains the statements required for informal applications as stated in the five (5) subparagraphs under section 91A-3-301(1), the statements required by subparagraphs (b) and (c) of section 91A-3-301(2), and

(c) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition.

If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable.

(2) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by (1) and (4) of section 91A-3-301 and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by subparagraph (b) of section 91A-3-301(4) above may be omitted.

Section 91A-3-403. Formal testacy proceeding; notice of hearing on petition. (1) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice shall be given in the manner prescribed by section 91A-1-401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under section 91A-3-204 of this code.

Notice shall be given to the following persons: the surviving spouse, children, and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(2) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on said petition shall be sent by registered mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(a) by inserting in one (1) or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(b) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(c) by engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

Section 91A-3-404. Formal testacy proceedings; written objections to probate. Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.

Section 91A-3-405. Formal testacy proceedings; uncontested cases; hearings and proof. If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 91A-3-409 have been met, or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one (1) of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

Section 91A-3-406. Formal testacy proceedings; contested cases; testimony of attesting witnesses. (1) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one (1) of the attesting witnesses, if within the state competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(2) If the will is self-proved, compliance with signature requirements

for execution is conclusively presumed and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.

Section 91A-3-407. Formal testacy proceedings; burdens in contested cases. In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

Section 91A-3-408. Formal testacy proceedings; will construction; effect of final order in another jurisdiction. A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state where the order was made.

Section 91A-3-409. Formal testacy proceedings; order; foreign will. After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper and that the proceeding was commenced within the limitation prescribed by section 91A-3-108, it shall determine the decedent's domicile at death, his heirs and his state of testacy. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 91A-3-612. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death, may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

Section 91A-3-410. Formal testacy proceedings; probate of more than one instrument. If two (2) or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one (1) instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one (1) instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of

a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of section 91A-3-412.

Section 91A-3-411. Formal testacy proceedings; partial intestacy. If it becomes evident in the course of a formal testacy proceeding that, though one (1) or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

Section 91A-3-412. Formal testacy proceedings; effect of order; vacation. Subject to appeal and subject to vacation as provided herein and in section 91A-3-413, a formal testacy order under sections 91A-3-409 through 91A-3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

(1) the court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication.

(2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one (1) or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death or were given no notice of any proceeding concerning his estate, except by publication.

(3) A petition for vacation under either (1) or (2) above must be filed prior to the earlier of the following time limits:

(a) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six (6) months after the filing of the closing statement.

(b) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by section 91A-3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent.

(c) Twelve (12) months after the entry of the order sought to be vacated.

(4) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs.

(5) The finding of the fact of death is conclusive as to the alleged decedent

dent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under section 91A-3-403(2) was made.

If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

Section 91A-3-413. Formal testacy proceedings; vacation of order for other cause. For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

Section 91A-3-414. Formal proceedings regarding appointment of personal representative. (1) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative, or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by section 91A-3-402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by section 91A-3-301(1) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(2) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under section 91A-3-203, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under section 91A-3-611.

SUPERVISED ADMINISTRATION

Section 91A-3-501. Supervised administration; nature of proceeding. Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court

on its own motion or on the motion of any interested party. Except as otherwise provided in sections 91A-3-501 through 91A-3-505, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

Section 91A-3-502. **Supervised administration; petition; order.** A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied. After notice to interested persons, the court shall order supervised administration of a decedent's estate:

(1) if the decedent's will directs supervised administration, it shall be ordered unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;

(2) if the decedent's will directs unsupervised administration, supervised administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or

(3) in other cases if the court finds that supervised administration is necessary under the circumstances.

Section 91A-3-503. **Supervised administration; effect on other proceedings.** (1) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

(2) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by section 91A-3-401.

(3) After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

Section 91A-3-504. **Supervised administration; powers of personal administration.** Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal repre-

sentative which may be ordered by the court must be endorsed on his letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

Section 91A-3-505. **Supervised administration; interim orders; distribution and closing orders.** Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings under section 91A-3-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY

Section 91A-3-601. **Qualification of personal representative.** Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

Section 91A-3-602. **Acceptance of appointment; consent to jurisdiction.** By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to him by ordinary first class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

Section 91A-3-603. **Bond not required without court order; exceptions.** No bond is required of a personal representative appointed in informal proceedings, except (1) upon the appointment of a special administrator;

(2) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond or

(3) when bond is required under section 91A-3-605.

Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of his duties.

Section 91A-3-604. **Bond amount; security; procedure; reduction.** If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the clerk indicating his best

estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the clerk, or give other suitable security, in an amount not less than the estimate. The clerk shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property or other adequate security. The clerk may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in section 91A-6-101) in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

Section 91A-3-605. **Demand for bond by interested person.** Any person apparently having an interest in the estate worth in excess of one thousand dollars (\$1,000), or any creditor having a claim in excess of one thousand dollars (\$1,000), may make a written demand that a personal representative give bond. The demand must be filed with the clerk and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in section 91A-3-603 or 91A-3-604. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty (30) days after receipt of notice is cause for his removal and appointment of a successor personal representative.

Section 91A-3-606. **Terms and conditions of bond.** (1) The following requirements and provisions apply to any bond required by this part:

(a) Bonds shall name the state as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.

(b) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.

(c) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.

(d) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.

(e) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

Section 91A-3-607. **Order restraining personal representative.** (1) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

(2) The matter shall be set for hearing within ten (10) days unless the parties otherwise agree. Notice as the court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the petition.

Section 91A-3-608. **Termination of appointment; general.** Termination of appointment of a personal representative occurs as indicated in sections 91A-3-609 to 91A-3-612, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.

Section 91A-3-609. **Termination of appointment; death or disability.** The death of a personal representative or the appointment of a conservator for the estate of a personal representative, terminates his appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.

Section 91A-3-610. **Termination of appointment; voluntary.** (1) An appointment of a personal representative terminates as provided in section 91A-3-1003, one (1) year after the filing of a closing statement.

(2) An order closing an estate as provided in section 91A-3-1001 or 91A-3-1002 terminates an appointment of a personal representative.

(3) A personal representative may resign his position by filing a written statement of resignation with the clerk after he has given at least fifteen (15) days written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

Section 91A-3-611. Termination of appointment by removal; cause; procedure. (1) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in section 91A-3-607, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

(2) Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was reduced as personal representative in this state to administer local assets.

Section 91A-3-612. Termination of appointment; change of testacy status. Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in section 91A-3-401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within thirty (30) days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

Section 91A-3-613. Successor personal representative. Sections 91A-3-301 through 91A-3-414 govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

Section 91A-3-614. Special administrator; appointment. A special administrator may be appointed:

(1) informally by the clerk on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in section 91A-3-609;

(2) in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

Section 91A-3-615. Special administrator; who may be appointed.

(1) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available, and qualified.

(2) In other cases, any proper person may be appointed special administrator.

Section 91A-3-616. Special administrator; appointed informally; powers and duties. A special administrator appointed by the clerk in informal proceedings pursuant to section 91A-3-614(1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under the code necessary to perform his duties.

Section 91A-3-617. Special administrator; formal proceedings; power and duties. A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts or on other terms as the court may direct.

Section 91A-3-618. Termination of appointment; special adminis-

trator. The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in sections 91A-3-608 through 91A-3-611.

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

Section 91A-3-701. Time of accrual of duties and powers. The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

Section 91A-3-702. Priority among different letters. A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

Section 91A-3-703. General duties; relation and liability to persons interested in estate; standing to sue. (1) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees under the laws of the state of Montana. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

(2) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration and of this code, an informally probated will is authority to administer and distribute the estate according to its terms. Subject to the provisions of this code, an order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse,

any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this code.

(3) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to death.

Section 91A-3-704. Personal representative to proceed without court order; exception. A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified under this code or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration.

Section 91A-3-705. Duty of personal representative; information to heirs and devisees. Not later than thirty (30) days after his appointment every personal representative, except any special administrator, shall give information of his appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information shall include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers or other duties. A personal representative may inform other persons of his appointment by delivery or ordinary first class mail.

Section 91A-3-706. Duty of personal representative; supplementary inventory and appraisal; employment of appraiser; copy to department of revenue. Within three (3) months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory, which inventory shall include listing of all property which the decedent owned, had an interest in or control over, individually, in common, or jointly, or otherwise had at the time of his death; or had possessory or dispositive rights over at the time of his death or had disposed of for less than its fair market value within three (3) years of his death; or which was affected by his death for the purpose of inheritance or estate taxes. The inventory shall include a statement of the full and true value of the decedent's interest in every item listed in such inventory. In this connection the personal representa-

tive shall appoint at least three (3) qualified and disinterested persons, any two (2) of whom may act, to assist him in ascertaining the fair market value as of the date of the decedent's death of all assets included in the estate. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

The personal representative shall send a copy of the inventory to interested persons who request it, and he shall file the original of the inventory with the court. In any event, a copy of the inventory and statement of value shall be mailed to the department of revenue.

Section 91A-3-707. Duty of personal representative; supplementary inventory; copy to department of revenue. If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information; and in any case shall mail a copy of it to the department of revenue.

Section 91A-3-708. Duty of personal representative; possession of estate. Except as otherwise provided by a decedent's will and subject to the provisions of section 91-3205, R.C.M. 1947, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

Section 91A-3-709. Power to avoid transfers. The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

Section 91A-3-710. Improper exercise of power; breach of fiduciary duty. If any exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing

with a personal representative shall be determined as provided in sections 91A-3-711 and 91A-3-712.

Section 91A-3-711. Sale, encumbrance or transaction involving conflict of interest; voidable; exceptions. Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure, unless

- (1) the will or a contract entered into by the decedent expressly authorized the transaction; or
- (2) the transaction is approved by the court after notice to interested persons.

Section 91A-3-712. Persons dealing with personal representatives; protection. A person who in good faith and without notice either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in section 91A-3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries nor does it in any way limit the provisions of section 91A-3-1010.

Section 91A-3-713. Transactions authorized for personal representatives; exceptions. Except as restricted by this code or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 91A-3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

- (1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;
- (2) receive assets from fiduciaries, or other sources;
- (3) perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(a) execute and deliver a deed of conveyance for cash payment of all sums remaining due on the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9)² enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) with the consent of the heirs or devisees or the court abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;

(17) with the consent of the heirs or devisees or the court effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one (1) or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances provided, however, no personal representative shall without prior court approval in a supervised proceeding, either directly or indirectly purchase any property of the estate he represents, nor shall he be interested in any such sale. All sales shall be fairly conducted and made for the best price obtainable.

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

(a) in the same business form for a period of not more than four (4) months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will;

(b) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or

(c) throughout the period of administration if the business is incorpo-

rated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) incorporate any business or venture in which the decedent was engaged at the time of his death;

(26) satisfy and settle claims and distribute the estate as provided in this code.

Section 91A-3-714. Final accounting; disposition of copies; further accountings; vouchers; challenges. Before any estate may be finally closed and the personal representative relieved from his duties and obligations thereunder he shall either file with the court or deliver to all interested persons an accounting under oath showing the amount of money received and expended by him, the amount of all claims presented against the estate and the names of the claimants and all other matters necessary to show the state of its affairs. A copy of such account shall also be mailed to the department of revenue. Any interested person at any time during the course of administration of an estate may for good cause shown require further accountings. In rendering any account the personal representative must produce and file vouchers for all charges, debts, claims and expenses which he has paid, which shall be filed with the clerk of court, provided that no voucher shall be required if the item of expenditure does not exceed fifty dollars (\$50). Upon the mailing or filing of any such account, any interested person may challenge the same in writing, and if the proceeding is at the time of such challenge informal, the challenge of such account shall be deemed a supervised matter.

Section 91A-3-715. Sale of estate property after delivery of inventory to department of revenue and payment or waiver of taxes; exception. Save upon an order of court obtained after notice and hearing in a supervised proceeding or formal probate, no property of the estate shall be sold unless and until a proper inventory and statement of value has been delivered to the state department of revenue and the tax due the state of Montana has been paid or the department of revenue has waived that tax in connection with the sale of the property.

Section 91A-3-716. Powers and duties of successor personal representative. A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.

Section 91A-3-717. Corepresentatives; when joint action required. If two (2) or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a corepresentative has been delegated to act for the others. Persons dealing with a corepresentative

if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

Section 91A-3-718. Powers of surviving personal representative. Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one (1) or more remaining after the appointment of one (1) or more is terminated, and if one (1) of two (2) or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office.

Section 91A-3-719. Compensation of personal representative. (1) A personal representative is entitled to reasonable compensation for his services. Such compensation shall not exceed three percent (3%) of the first forty thousand dollars (\$40,000) of the value of the estate as reported for federal estate tax or state inheritance tax purposes, whichever is larger and two percent (2%) of the value of the estate in excess of forty thousand dollars (\$40,000) as reported for federal estate tax or state inheritance tax purposes, whichever is larger.

(2) In proceedings conducted for the termination of joint tenancies, the compensation of the personal representative shall not exceed two percent (2%) of the interest passing.

(3) In proceedings conducted for the termination of a life estate, the compensation allowed the personal representative shall not exceed two percent (2%) of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the personal representative's compensation shall not exceed two percent (2%) of the value of the estate, except that it shall not be less than one hundred dollars (\$100).

(4) If there is more than one personal representative, only one compensation is allowed.

(5) The court may allow additional compensation for extraordinary services. Such additional compensation shall not be greater than the amount which is allowed for the original compensation.

(6) If the will provides for the compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to compensation under the terms of this section. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

Section 91A-3-720. Compensation of attorney. (1) If the services of an attorney are engaged by the personal representative, the compensation of such attorney shall not exceed one and one half (1 ½) times the compensation allowable to the personal representative.

(2) If the services of an attorney are engaged by the personal representative to assist in the termination of joint tenancies, the compensation

allowed the attorney shall not exceed three percent (3%) of the interest passing.

(3) If the services of an attorney are engaged in connection with the termination of a life estate, the compensation allowed the attorney shall not exceed three percent (3%) of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the attorney's compensation shall not exceed three percent (3%) except that it shall not be less than one hundred dollars (\$100).

(4) If the services of more than one attorney are engaged, only one compensation shall be allowed.

(5) In cases where further compensation may be allowed to an attorney, the same must be fixed and determined by the court upon good cause shown after notice and hearing of an application therefor.

Section 91A-3-721. Expenses in estate litigation. If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred.

Section 91A-3-722. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate; court to set disputed fee. Upon the filing of a motion for settlement of fees by the court filed by an interested person, the personal representative or the person employed by the personal representative and after notice to all interested persons, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, shall be reviewed and determined by the court. In any dispute concerning fees, the court shall set the fee. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

CREDITORS' CLAIMS

Section 91A-3-801. Notice to creditors. Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice once a week for three (3) successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within four (4) months after the date of the first publication of the notice or be forever barred, and proof of publication shall be filed with the clerk.

Section 91A-3-802. Statutes of limitations. Unless an estate is insolvent the personal representative, with the consent of all successors, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running

of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the four (4) months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under section 91A-3-804 is equivalent to commencement of a proceeding on the claim.

Section 91A-3-803. Limitations of presentation of claims; exception. (1) All claims against a decedent's estate with the exception of claims founded on tort which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) within four (4) months after the date of the first publication of notice to creditors if notice is given in compliance with section 91A-3-801; provided, claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state; or

(b) within three (3) years after the decedent's death, if notice to creditors has not been published.

(2) All claims against a decedent's estate with the exception of claims founded on tort which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) a claim based on a contract with the personal representative, within four (4) months after performance by the personal representative is due;

(b) any other claim, within four (4) months after it arises.

(3) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance.

Section 91A-3-804. Manner of presentation of claims. Claims against a decedent's estate may be presented as follows:

(1) The claimant shall mail to the personal representative return receipt requested a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with

the clerk of the court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(2) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.

(3) If a claim is presented under subsection (1), no proceeding thereon may be commenced more than sixty (60) days after the personal representative has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the sixty (60) day period, or to avoid injustice the court, on petition, may order an extension of the sixty (60) day period, but in no event shall the extension run beyond the applicable statute of limitations.

Section 91A-3-805. Classification of claims. (1) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

- (a) costs and expenses of administration;
- (b) reasonable funeral expenses;
- (c) debts and taxes with preference under federal law;
- (d) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;
- (e) debts and taxes with preference under the laws of this state;
- (f) all other claims.

(2) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

Section 91A-3-806. Allowance of claims. (1) As to claims presented in the manner described in section 91A-3-804 within the time limit prescribed in 91A-3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which

is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty (60) days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for sixty (60) days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

(2) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (1) of this section. Notice in this proceeding shall be given to the claimant, the personal representative and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(3) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(4) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty (60) days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

Section 91A-3-807. Payment of claims. (1) Upon the expiration of four (4) months from the date of the first publication of the notice to creditors, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(2) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if

(a) the payment was made before the expiration of the time limit stated in subsection (1) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) the payment was made, due to the negligence or wilful fault of

the personal representative, in such manner as to deprive the injured claimant of his priority.

Section 91A-3-808. Individual liability of personal representative.

(1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

(4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.

Section 91A-3-809. Secured claims. Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise payment is upon the basis of one of the following:

(1) if the creditor exhausts his security before receiving payment, unless precluded by other law upon the amount of the claim allowed less the fair value of the security; or

(2) if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise or litigation.

Section 91A-3-810. Claims not due and contingent on unliquidated claims. (1) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(2) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

(a) if the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account;

(b) arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating

a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

Section 91A-3-811. Counterclaims. In allowing a claim the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

Section 91A-3-812. Execution and levies prohibited. No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges or liens upon real or personal property in an appropriate proceeding.

Section 91A-3-813. Compromise of claims. When a claim against the estate has been presented in any manner, the personal representative, with the consent of the heirs or devisees or the court may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

Section 91A-3-814. Encumbered assets. If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

Section 91A-3-815. Administration in more than one state; duty of personal representative. (1) All assets of estates being administered in this state are subject to all claims, allowances and charges existing or established against the personal representative wherever appointed.

(2) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

(3) In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the

decendent's last domicile, the claims allowed in this state shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

Section 91A-3-816. Final distribution to domiciliary personal representative. The estate of a nonresident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless (1) by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile;

(2) the personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or

(3) the court orders otherwise in a proceeding for a closing order under section 91A-3-1001 or incident to the closing of a supervised administration. In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this article.

SPECIAL PROVISIONS RELATING TO DISTRIBUTION

Section 91A-3-901. Successors' rights if no administration. In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

Section 91A-3-902. Distribution; order in which assets appropriated; abatement. (1) Except as provided in subsection (2) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:

- (a) property not disposed of by the will;
- (b) residuary devisees;
- (c) general devisees;
- (d) specific devisees.

For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(2) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(3) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

Section 91A-3-903. Successor's indebtedness offset against interest; defenses available. The amount of a noncontingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

Section 91A-3-904. Interest on general pecuniary devise. General pecuniary devises bear interest at the legal rate beginning one (1) year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

Section 91A-3-905. Penalty clause for contest. A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

Section 91A-3-906. Distribution in kind; valuation; method. (1) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(a) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in section 91A-2-402 shall receive the items selected.

(b) Any homestead or family allowance or devise payable in money may be satisfied by value in kind provided

(i) the person entitled to the payment has not demanded payment in cash;

(ii) the property distributed in kind is valued at fair market value as of the date of its distribution, and

(iii) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(c) For the purpose of valuation under paragraph (b) securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than thirty (30) days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(d) The residuary estate shall be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution.

(2) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within thirty (30) days after mailing or delivery of the proposal.

Section 91A-3-907. **Distribution in kind; evidence.** If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring or releasing the assets to the distributee as evidence of the distributee's title to the property.

Section 91A-3-908. **Distribution; right or title of distributee.** Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

Section 91A-3-909. **Improper distribution; liability of distributee.** Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

Section 91A-3-910. **Purchasers from distributees protected.** If property distributed in kind or a security interest therein is acquired by a purchaser, or lender, for value from a distributee who has received an

instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of any claims of the estate and incurs no personal liability to the estate, whether or not the distribution was proper. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind.

Section 91A-3-911. **Partition for purpose of distribution.** When two (2) or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one (1) or more of the heirs or devisees may petition the court prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

Section 91A-3-912. **Private agreements among successors to decedent binding on personal representative.** Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

Section 91A-3-913. **Distribution to trustee.** (1) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in section 91A-7-303.

(2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

(3) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (1) and (2).

Section 91A-3-914. **Disposition of unclaimed assets.** (1) If an heir, devisee or claimant cannot be found, the personal representative shall distribute the share of the missing person to his conservator, if any,

otherwise to the department of revenue to be deposited in the state escheat fund as provided in chapter 5, Title 91, R.C.M. 1947, as amended.

(2) Any person having any claim to a share deposited in the state escheat fund under the provisions of this code shall follow the procedures set out in sections 91-501 through 91-526, concerning escheated estates to claim such share.

Section 91A-3-915. **Distribution to person under disability.** A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator, or any other person authorized by this code or otherwise to give a valid receipt and discharge for the distribution.

Section 91A-3-916. **Apportionment of estate taxes.** (1) For purposes of this section:

(a) "estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state;

(b) "person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

(c) "person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee;

(d) "state" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

(e) "tax" means the federal estate tax and any additional inheritance, estate or death taxes imposed by the laws of any state and interest and penalties imposed in addition to the tax;

(f) "fiduciary" means personal representative or trustee.

(2) Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent's will directs a method of apportionment of tax different from the method described in this code, the method described in the will controls.

(3)(a) The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose may determine the apportionment of the tax.

(b) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (2), because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

(c) If the court finds that the assessment of penalties and interest

assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.

(d) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this code the determination of the court in respect thereto shall be prima facie correct.

(4)(a) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this act.

(b) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

(5)(a) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax.

(b) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(c) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(d) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

(e) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or devise is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property,

the property is not included in the computation provided for in subsection (2) hereof, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(6) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

(7) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three (3) months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the three (3) months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectable at a time following the death of the decedent but thereafter became uncollectable. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

(8) A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

CLOSING ESTATES

Section 91A-3-1001. Formal proceedings terminating administration; testate or intestate; order of general protection. (1) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one (1) year from the appointment of the original personal representative except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs

and adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

(2) If one (1) or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

Section 91A-3-1002. Formal proceedings terminating testate administration; order construing will without adjudicating testacy. A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one (1) year, from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of section 91A-3-1001.

Section 91A-3-1003. Closing estates by sworn statement of personal representative. (1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than six (6) months after the date of original appointment of a general personal representative for the estate, a verified statement stating that he, or a prior personal representative whom he has succeeded, has or have:

(a) published notice to creditors as provided by section 91A-3-801 and that the first publication occurred more than six (6) months prior to date of the statement;

(b) fully administered the estate of the decedent by making payment, settlement or other disposition of all claims which were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities; and

(c) sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby.

(d) Complied with the provisions of section 91A-3-1004.

(2) If no proceedings involving the personal representative are pending in the court one (1) year after the closing statement is filed, the appointment of the personal representative terminates.

Section 91A-3-1004. Department of revenue certificate showing taxes paid; prerequisite of closing estate. In all probate proceedings under this code before final distribution to successors is made and before any petition is granted under sections 91A-3-1001, 91A-3-1002, or 91A-3-1003, there shall have been filed with the clerk a certificate from the department of revenue stating that any inheritance tax due on the assets of the estate has been paid. This section shall not prohibit such partial distribution as may become necessary in the course of administration.

Section 91A-3-1005. Liability of distributees to claimants. After assets of an estate have been distributed and subject to section 91A-3-1007, an undischarged claim not barred may be prosecuted in a proceeding against one (1) or more distributees. No distributee shall be liable to claimants for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

Section 91A-3-1006. Limitations on proceedings against personal representative. Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six (6) months after the filing of the closing statement. The rights thus barred do not include rights to

recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

Section 91A-3-1007. Limitations on actions and proceedings against distributees. Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of three (3) years after the decedent's death; or one (1) year after the time of distribution thereof. This section does not bar an action to recover property or value received as the result of fraud.

Section 91A-3-1008. Certificate discharging liens securing fiduciary performance. After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the clerk that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

Section 91A-3-1009. Subsequent administration. If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one (1) year after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

Section 91A-3-1010. Lien of state on estate property for unpaid inheritance taxes. All property which is affected by the death of the decedent and on which inheritance, estate or death taxes are due under the laws of this state is subject to the lien of the state of Montana until such taxes have been paid. This lien follows all property sold in the course of administration or distributed under this code until such time as all inheritance taxes have been paid and a receipt showing payment thereof has been filed with the clerk of court, subject to applicable statutes of limitations on state inheritance tax liens. The department of revenue may issue a consent to transfer any real or personal property in the estate of a decedent free of the lien for unpaid inheritance taxes upon proper application and under such rules and regulations as the department shall prescribe provided that such transfer shall not jeopardize payment of the inheritance taxes due.

COMPROMISE OF CONTROVERSIES

Section 91A-3-1101. Effect of approval of agreements involving

trusts, inalienable interests, or interests of third persons. A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probated will, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto including those unborn, unascertained or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

Section 91A-3-1102. **Procedure for securing court approval of compromises.** The procedure for securing court approval of a compromise is as follows: (1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary, trust, and other fiduciaries and representatives.

(3) After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

PROCEDURE FOR COLLECTION OF PERSONAL PROPERTY BY
AFFIDAVIT,
TERMINATION OF JOINT TENANCIES AND LIFE ESTATES,
AND SUMMARY ADMINISTRATION PROCEDURE
FOR SMALL ESTATES

Section 91A-1-1201. **Collection of personal property by affidavit.** (1) Thirty (30) days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

- (a) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed fifteen hundred dollars (\$1,500);
- (b) thirty (30) days have elapsed since the death of the decedent;
- (c) no application or petition for the appointment on a personal representative is pending or has been granted in any jurisdiction; and
- (d) the claiming successor is entitled to payment or delivery of the property.

(2) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1).

Section 91A-3-1202. **Effect of affidavit.** The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any person representative of the estate or to any other person having a superior right.

Section 91A-3-1203. **Small estates; summary administrative procedure.** If it appears from the inventory and appraisal that the value of the net distributable estate does not exceed one thousand five hundred dollars (\$1,500), or the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in section 91A-3-1202.

Section 91A-3-1204. **Small estates; closing by sworn statement of personal representative.** (1) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of section 91A-3-1201 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

- (a) to the best knowledge of the personal representative, the value of the net distributable estate did not exceed one thousand five hundred dollars (\$1,500), or the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family

allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(b) the personal representative has fully administered the estate by payment of inheritance taxes and by disbursing and distributing it to the persons entitled thereto; and

(c) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(2) If no actions or proceedings involving the personal representative are pending in the court one (1) year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under section 91A-3-1005.

Section 91A-3-1205. Procedures for termination of joint tenancies and life estates. (1) If the inventory in an estate asserts that all or any part of the property listed therein was held by the decedent in joint tenancy or that the decedent held a life estate in any of the property listed, or for any other reason a determination of inheritance tax is required, the personal representative shall file with the department of revenue copies of the instruments by which each such joint tenancy or life estate was created or other interest requiring determination of inheritance tax came into being or other evidence of the existence of such joint tenancy or life estate or other property interest requiring the determination of inheritance tax. The department of revenue shall examine the documents and shall determine the existence of each asserted joint tenancy, life estate or other property interest requiring a determination of inheritance tax.

(2) If it shall be determined that all of the property listed in the inventory was held in joint tenancy or was held by the decedent as a life estate or requires the determination of inheritance tax, or any combination thereof, the department of revenue shall issue its certificate showing that all such property was in joint tenancy or was held as a life estate or requires only the determination of inheritance tax, and stating the names of the surviving owners, remaindermen or possessors thereof or persons entitled to an interest therein. The certificate shall also contain an interlocutory certificate by the department of revenue as to the inheritance tax, if any, due the state of Montana by reason of the death of the decedent. The certificate shall be mailed to the clerk of the appropriate court and to the personal representative. If no dispute exists as to the amount of tax due, if any, the tax shall be paid as provided in the inheritance tax laws of this state. Upon the filing of the receipt showing payment of the tax, the clerk of court shall issue a certificate stating that the joint tenancies or life estates are terminated or other interest in property requiring determination of inheritance tax is properly vested, specifically describing the property and designating the surviving owners or

possessors, or persons entitled to an interest therein. This certificate may be filed in the office of the clerk and recorder of any county in which any such property is located.

(3) (a) If not all the property in the inventory was joint tenancy or life estate property or property requiring only the determination of inheritance tax, the department of revenue shall:

(i) determine the inheritance tax, if any, due to the state of Montana by reason of the death of the decedent and mail its interlocutory certificate to the clerk of the appropriate court and to the personal representative, showing the amount of tax so determined;

(ii) determine what property listed in the inventory was joint tenancy or life estate property or property requiring only the determination of inheritance tax and mail to the clerk of the appropriate court and to the personal representative its certificate describing such joint tenancy and life estate property or property requiring only the determination of inheritance tax and naming the surviving owners or possessors thereof or persons entitled to an interest therein.

(b) If the value of the property not in joint tenancy or held by the decedent as a life estate or requiring only the determination of inheritance tax does not exceed the maximum for summary administration, the personal representative shall proceed under the summary procedure as to the non-joint tenancy or life estate property which requires more than just the determination of inheritance tax shall pay any inheritance tax and shall file with the appropriate clerk and recorder a certified copy of the department of revenue's list of joint tenancy property.

(c) If the value of the property not held in joint tenancy or as a life estate and not held as property requiring only a determination of inheritance tax does not permit a summary procedure, the personal representative shall proceed under the applicable statutes for administration and distribution and shall include in his decree or instrument of final distribution the list of such joint tenancy or life estate property or property requiring determination of inheritance tax, listing the surviving owners or possessors thereof or persons entitled to an interest therein. Such decree or instrument of final distribution shall be deemed a termination of the joint tenancy or life estate or vesting of the property interest.

(4) If disputes exist as to tax computation, they shall be resolved as provided under the laws applicable to the determination of inheritance taxes.

FOREIGN PERSONAL REPRESENTATIVES; ANCILLARY ADMINISTRATION DEFINITIONS

Section 91A-4-101. Definitions. In this article:

(1) "Local administration" means administration by a personal representative appointed in this state pursuant to appointment proceedings described in article III.

(2) "Local personal representative" includes any personal representa-

tive appointed in this state pursuant to appointment proceedings described in article III and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to section 91A-4-205.

(3) "Resident creditor" means a person domiciled in, or doing business in this state, who is, or could be, a claimant against an estate of a nonresident decedent.

POWERS OF FOREIGN PERSONAL REPRESENTATIVES

Section 91A-4-201. Filing letters and inventory with local district court; copy to department of revenue. (1) The domiciliary foreign personal representative of the estate of a nonresident decedent who wishes to receive payment and delivery as described in section 91A-4-204 or to exercise the powers over assets described in section 91A-4-207 shall file in duplicate with a district court in this state in a county in which property belonging to the decedent is located authenticated copies of his appointment and of any official bond he has given, an inventory and appraisal of the property of the nonresident decedent located in this state, which inventory shall contain the information prescribed in section 91A-3-706, and an affidavit stating

(a) the date of death of the nonresident decedent, and
(b) that no local administration or application or petition therefor is pending in this state.

(2) Upon receiving the information required by subsection one (1), the clerk of court shall issue a certificate to the domiciliary foreign personal representative identifying him as having registered with the district court and stating the name and date of death of the decedent.

(3) The clerk shall also immediately forward a copy of the appointment, affidavit and inventory and appraisal required by subsection (1) to the department of revenue.

Section 91A-4-202. Determination of inheritance taxes; certificate of department of revenue showing taxes paid, waived or bond posted. (1) The department of revenue shall determine what inheritance tax, if any, is owing on the property of the nonresident decedent located in this state and shall send notice of the tax owing to the domiciliary foreign personal representative and to the clerk of court.

(2) Upon payment of the inheritance tax due, or if no tax is owing, the department of revenue shall issue a certificate to the domiciliary foreign personal representative indicating that inheritance taxes either are not owing or have been paid and shall send a copy of the certificate to the clerk of court.

(3) The department may issue an order waiving inheritance taxes on a particular item of property under such terms and circumstances as the department shall determine.

(4) Upon the posting by the domiciliary foreign personal representative of satisfactory bond, the department may issue a certificate indicating

that bond has been posted sufficient to secure any inheritance tax due on the in-state property of the nonresident decedent. This certificate may be issued at any time after the filing of the inventory with the clerk of court.

Section 91A-4-203. Right to inspect estate assets for inventory. Any person holding any property of a nonresident decedent, including any instrument evidencing a debt, obligation, stock or chose in action, shall permit the domiciliary foreign personal representative of the nonresident decedent to inspect and appraise the property for purposes of completing the inventory and appraisal called for in section 91A-4-201(1) upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating

(1) the date of death of the nonresident decedent,

(2) that no local administration or application or petition therefor is pending in this state, and

(3) that the domiciliary foreign personal representative is entitled to make such inspection and appraisal.

Section 91A-4-204. Payment of debt and delivery of property to domiciliary foreign personal representative without local administration. At any time after the expiration of sixty (60) days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with a certificate from the clerk of the court for the county where the domiciliary foreign personal representative has filed his affidavit as described in section 91A-4-201 and a certificate from the department of revenue, as described in section 91A-4-202.

Section 91A-4-205. Payment on delivery discharges. Payment or delivery made in good faith on the basis of the certificate of the clerk of court and the certificate of the department of revenue releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

Section 91A-4-206. Resident creditor notice; court order. (1) Payment or delivery under section 91A-4-204 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

(2) In cases under subsection (1) the foreign personal representative must seek an order of the court in which he has filed his affidavit to obtain payment or delivery unless the notification by the resident creditor is withdrawn.

Section 91A-4-207. **Powers of domiciliary foreign personal representative generally; powers as special administrator.** (1) Except as limited by section 91A-4-206, a domiciliary foreign personal representative who has complied with sections 91A-4-201 and 91A-4-202, may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

(2) A domiciliary foreign personal representative who has complied with all the requirements of section 91A-4-201(1) except for the filing of an inventory and appraisal, may, when necessary to protect the estate of the decedent and upon appointment by the clerk of court, exercise the powers of a special administrator described in sections 91A-3-614 through 91A-3-618.

Section 91A-4-208. **Powers of representatives in transition.** The power of a domiciliary foreign personal representative under section 91A-4-204 or 91A-4-207 shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under section 91A-4-207, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this state.

Section 91A-4-209. **Ancillary and other local administrations; provisions governing.** In respect to a nonresident decedent, the provisions of this code govern (1) proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and

(2) the status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration.

JURISDICTION OVER FOREIGN REPRESENTATIVES

Section 91A-4-301. **Jurisdiction by act of foreign personal representative.** A foreign personal representative by doing any of the acts described in sections 91A-4-201 through 91A-4-207, or by doing any act as a personal representative in this state that would have given the state jurisdiction over him as an individual, submits himself personally to the jurisdiction of the courts of this state in any proceeding relating to the estate.

Jurisdiction which arises solely from receiving payment of money or taking delivery of personal property is limited to the money or value of personal property collected.

Section 91A-4-302. **Jurisdiction by act of decedent.** In addition to jurisdiction conferred by section 91A-4-301, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.

Section 91A-4-303. **Service on foreign personal representative.** (1) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to his last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately prior to death.

(2) If service is made upon a foreign personal representative as provided in subsection (1), he shall be allowed at least thirty (30) days within which to appear or respond.

JUDGMENTS AND PERSONAL REPRESENTATIVE

Section 91A-4-401. **Effect of adjudication for or against personal representative.** An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY GENERAL PROVISIONS

Section 91A-5-101. **Definitions and use of terms.** Unless otherwise apparent from the context, in this code:

(1) "incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person;

(2) "protective proceeding" means a proceeding under the provisions of section 91A-5-401 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief;

(3) "protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made;

(4) "ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

Section 91A-5-102. **Jurisdiction of subject matter; consolidation of proceedings.** (1) The court has jurisdiction over protective proceedings and guardianship proceedings.

(2) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

Section 91A-5-103. **Facility of payment or agreement.** Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding five thousand dollars (\$5,000) per annum, by paying or delivering the money or property to:

- (1) the minor, if he has attained the age of eighteen (18) years or is married;
- (2) any person having the care and custody of the minor with whom the minor resides;
- (3) a guardian of the minor; or
- (4) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor.

This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. The persons, other than the minor or any financial institution under (4) above, receiving money or property for a minor, are obligated to apply the money to the support and education of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor and any balance not so used and any property received for the minor must be turned over to the minor when he attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

Section 91A-5-104. **Delegation of powers by parent or guardian.** A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six (6) months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.

GUARDIANS OF MINORS

Section 91A-5-201. **Status of guardian of minor; general.** A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

Section 91A-5-202. **Testamentary appointment of guardian of minor.** The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under section 91A-5-203, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated, if before acceptance, both parents are dead or the surviving parent is adjudged

incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care or to his nearest adult relations.

Section 91A-5-203. **Objection by minor of fourteen (14) or older to testamentary appointment.** A minor of fourteen (14) or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within thirty (30) days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee, or any other suitable person.

Section 91A-5-204. **Court appointment of guardian of minor; conditions for appointment.** The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order. A guardian appointed by will as provided in section 91A-5-202 whose appointment has not been prevented or nullified under 91A-5-203 has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty (30) days after notice of the guardianship proceeding.

Section 91A-5-205. **Court appointment of guardian of minor; venue.** The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

Section 91A-5-206. **Court appointment of guardian of minor; qualifications; priority of guardian's nominee.** The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen (14) years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

Section 91A-5-207. **Court appointment of guardian of minor; procedure.** (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by section 91A-1-401 to:

- (a) the minor, if he is fourteen (14) or more years of age;
- (b) the person who has had the principal care and custody of the minor during the sixty (60) days preceding the date of the petition; and
- (c) any living parent of the minor.

(2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 91A-5-204 have been met, and the welfare and best interests of the minor will be served by the requested appointment,

it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

(3) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six (6) months.

(4) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen (14) years of age or older.

Section 91A-5-208. Consent to service by acceptance of appointment; notice. By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

Section 91A-5-209. Powers and duties of guardian of minor. A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(1) He must take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(2) He may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. He also may receive money or property of the ward paid or delivered by virtue of section 91A-5-103. Any sums so received shall be applied to the ward's current needs for support, care and education. He must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(3) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third

persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of his ward.

(4) A guardian must report the condition of his ward and of the ward's estate which has been subject to his possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule.

Section 91A-5-210. Termination of appointment of guardian; general. A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

Section 91A-5-211. Proceedings subsequent to appointment; venue. (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

Section 91A-5-212. Resignation or removal proceedings. (1) Any person interested in the welfare of a ward, or the ward, if fourteen (14) or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen (14) or more years of age.

GUARDIANS OF INCAPACITATED PERSONS

Section 91A-5-301. Testamentary appointment of guardian for incapacitated person. (1) The parent of an incapacitated person may by will appoint a guardian of the incapacitated person. A testamentary

appointment by a parent becomes effective when, after having given seven (7) days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, if prior thereto, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.

(2) The spouse of a married incapacitated person may by will appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given seven (7) days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

(3) This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

(4) On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the sections 91A-5-302 through 91A-5-313, inclusive.

Section 91A-5-302. **Venue.** The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

Section 91A-5-303. **Procedure for court appointment of a guardian of an incapacitated person.** (1) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and be interviewed by a visitor sent by the court. The visitor also shall interview the person seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. The person alleged to be incapacitated is

entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or his counsel so requests.

Section 91A-5-304. **Findings; order of appointment.** The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated person. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.

Section 91A-5-305. **Acceptance of appointment; consent to jurisdiction.** By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

Section 91A-5-306. **Termination of guardianship for incapacitated person.** The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in section 91A-5-307. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

Section 91A-5-307. **Removal or resignation of guardian; termination of incapacity.** (1) On petition of the ward or any person interested in his welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept his resignation and make any other order which may be appropriate.

(2) An order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the ward or any person interested in his welfare may petition for an order that he is no longer incapacitated, and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

(3) Before removing a guardian, accepting the resignation of a guardian, or ordering that a ward's incapacity has terminated, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained, to observe conditions and report in writing to the court.

Section 91A-5-308. **Visitor in guardianship proceedings.** A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing or social work and is an officer, employee or special appointee of the court with no personal interest in the proceedings.

Section 91A-5-309. **Notices in guardianship proceedings.** (1) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

- (a) the ward or the person alleged to be incapacitated and his spouse, parents and adult children;
- (b) any person who is serving as his guardian, conservator or who has his care and custody; and
- (c) in case no other person is notified under (a), at least one (1) of his closest adult relatives, if any can be found.

(2) Notice shall be served personally on the alleged incapacitated person, and his spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person shall be given as provided in section 91A-1-401. Waiver of notice by the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed in an interview with the visitor. Representation of the alleged incapacitated person by a guardian ad litem is not necessary.

Section 91A-5-310. **Temporary guardians.** If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian pending notice and hearing. If an appointed guardian is not effectively performing his duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed six (6) months. A temporary guardian is entitled to the care and custody of the ward and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects the provisions of this code concerning guardians apply to temporary guardians.

Section 91A-5-311. **Who may be guardian; priorities.** (1) Any competent person or a suitable institution may be appointed guardian of an incapacitated person.

(2) Persons who are not disqualified have priority for appointment as guardian in the following order:

- (a) the spouse of the incapacitated person;
- (b) an adult child of the incapacitated person;
- (c) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(d) any relative of the incapacitated person with whom he has resided for more than six (6) months prior to the filing of the petition;

(e) a person nominated by the person who is caring for him or paying benefits to him.

Section 91A-5-312. **General powers and duties of guardian.** (1) A guardian of an incapacitated person has the same powers, rights and duties respecting his ward that a parent has respecting his unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:

(a) to the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this state.

(b) If entitled to custody of his ward he shall make provision for the care, comfort and maintenance of his ward and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of his ward is in need of protection.

(c) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service.

(d) If no conservator for the estate of the ward has been appointed, he may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward; but, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one (1) of the next of kin of the incompetent ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.

(e) A guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as required by the court or court rule.

(f) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the guardian must account to the conservator for funds expended.

(2) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled

to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

Section 91A-5-313. Proceedings subsequent to appointment; venue. (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

Section 91A-5-401. Protective proceedings. Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:

(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.

(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that

(a) the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and

(b) the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.

Section 91A-5-402. Protective proceedings; jurisdiction of affairs of protected persons. After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended or distributed to or for the use of the protected person or any of his dependents;

(3) concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

Section 91A-5-403. Venue. Venue for proceedings under this part is:

(1) in the place in this state where the person to be protected resides whether or not a guardian has been appointed in another place; or

(2) if the person to be protected does not reside in this state, in any place where he has property.

Section 91A-5-404. Original petition for appointment or protective order. (1) The person to be protected, any person who is interested in his estate, affairs or welfare including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.

(2) The petition shall set forth to the extent known, the interest of the petitioner; the name, age, residence and address of the person to be protected; the name and address of his guardian, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension or allowance to which he is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.

Section 91A-5-405. Notice. (1) On a petition for appointment of a conservator or other protective order, the person to be protected and his spouse or, if none, his parents, must be served personally with notice of the proceeding at least fourteen (14) days before the date of hearing if they can be found within the state, or, if they cannot be found within the state, they must be given notice in accordance with section 91A-1-401. Waiver by the person to be protected is not effective unless he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.

(2) Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under section 91A-5-406 and to interested persons and other persons as the court may direct. Except as otherwise provided in (1), notice shall be given in accordance with section 91A-1-401.

Section 91A-5-406. Protective proceedings; request for notice;

interested person. Any interested person who desires to be notified before any order is made in a protective proceeding may file with the clerk a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

Section 91A-5-407. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen (14) years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing.

Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

Section 91A-5-408. Permissible court orders. The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for his benefit or the benefit of his dependents.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family and members of his household.

(3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his household, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to, power to make gifts, to convey or release his contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release his powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise his rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise his right to an elective share in the estate of his deceased spouse and to renounce any interest by testate or intestate succession or by inter vivos transfer.

(4) The court may exercise or direct the exercise of, its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding twenty percent (20%) of any year's income of the estate or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that he either is incapable of consenting or has consented to the proposed exercise of power.

(5) An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person.

Section 91A-5-409. Protective arrangements and single transactions authorized. (1) If it is established in a proper proceeding that a basis exists as described in section 91A-5-401 for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to, payment, delivery, deposit or retention of funds or property, sale, mortgage, lease or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.

(2) When it has been established in a proper proceeding that a basis exists as described in section 91A-5-401 for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify any contract, trust or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(3) Before approving a protective arrangement or other transaction

under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

Section 91A-5-410. Who may be appointed conservator; priorities.

(1) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

- (a) a conservator, guardian of property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;
- (b) an individual or corporation nominated by the protected person if he is fourteen (14) or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;
- (c) the spouse of the protected person;
- (d) an adult child of the protected person;
- (e) a parent of the protected person, or a person nominated by the will of a deceased parent;
- (f) any relative of the protected person with whom he has resided for more than six (6) months prior to the filing of the petition;
- (g) a person nominated by the person who is caring for him or paying benefits to him.

(2) A person in priorities (a), (c), (d), (e), or (f) may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

Section 91A-5-411. Bond. The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in his control plus one (1) year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. The court in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

Section 91A-5-412. Terms and requirements of bond. (1) The following requirements and provisions apply to any bond required under section 91A-5-411:

(a) unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other;

(b) by executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;

(c) on petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;

(d) the bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

Section 91A-5-413. Acceptance of appointment; consent to jurisdiction. By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator, or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

Section 91A-5-414. Compensation and expenses. If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate.

Section 91A-5-415. Death, resignation or removal of conservator. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. A conservator so appointed succeeds to the title and powers of his predecessor.

Section 91A-5-416. Petitions for orders subsequent to appointment. (1) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order

- (a) requiring bond or security or additional bond or security, or reducing bond,
- (b) requiring an accounting for the administration of the trust,
- (c) directing distribution,
- (d) removing the conservator and appointing a temporary or successor conservator, or
- (e) granting other appropriate relief.

(2) A conservator may petition the appointing court for instructions concerning his fiduciary responsibility.

(3) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

(4) For purposes of this section, any person, institution or agency which is furnishing or supplying any money for support or care of a person for whom a conservator has been appointed is a person interested in the welfare of such protected person.

Section 91A-5-417. Conservator to act as fiduciary. In the exercise of his powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees.

Section 91A-5-418. Inventory and records. Within ninety (90) days after his appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with his oath or affirmation that it is complete and accurate so far as he is informed. The conservator shall provide a copy thereof to the protected person if he can be located, has attained the age of fourteen (14) years, and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides. The conservator shall keep suitable records of his administration and exhibit the same on request of any interested person.

Section 91A-5-419. Accounts. Every conservator must account to the court for his administration of the trust upon his resignation or removal, and at other times as the court may direct. On termination of the protected person's minority or disability, a conservator may account to the court, or he may account to the former protected person or his personal representative. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters considered in connection therewith; and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

Section 91A-5-420. Conservators; title by appointment. The appointment of a conservator vests in his title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact. The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

Section 91A-5-421. Recording conservator's letters. Letters of conservatorship are evidence of transfer of all assets of a protected person

to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person, or his successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship, and orders terminating conservatorships, may be filed or recorded to give record notice of title as between the conservator and the protected person.

Section 91A-5-422. Sale, encumbrance or transaction involving conflict of interest; voidable; exceptions. Any sale or encumbrance to a conservator, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

Section 91A-5-423. Persons dealing with conservators; protection. A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in section 91A-5-408, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in section 91A-5-426 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

Section 91A-5-424. Powers of conservator in administration. (1) A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of eighteen (18) years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section 91A-5-209 until the minor attains the age of eighteen (18) or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by sections 91A-5-201 through 91A-5-212, inclusive.

(2) A conservator has power without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(3) A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation, to

(a) collect, hold and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

(b) receive additions to the estate;

(c) continue or participate in the operation of any business or other enterprise;

(d) acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

(e) invest and reinvest estate assets in accordance with subsection (2);

(f) deposit estate funds in a bank including a bank operated by the conservator;

(g) acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(h) make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(i) subdivide, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;

(j) enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;

(k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(l) grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;

(m) vote a security, in person or by general or limited proxy;

(n) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(p) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;

(q) insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;

(r) borrow money to be repaid from estate assets or otherwise; to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets

and the conservator has a lien on the estate as against the protected person for advances so made;

(s) pay or contest any claim; to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

(t) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate;

(u) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(v) pay any sum distributable to a protected person or a dependent of the person who is a minor or incompetent, without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or if none, to a relative or other person with custody of his person;

(w) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one (1) or more agents to perform any act of administration, whether or not discretionary;

(x) prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and

(y) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

Section 91A-5-425. Distributive powers and duties of conservator.

(1) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care or benefit of the protected person and his dependents in accordance with the following principles:

(a) The conservator is to consider recommendations relating to the appropriate standard of support, education and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(b) The conservator is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to

(i) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him;

(ii) the accustomed standard of living of the protected person and members of his household;

(iii) other funds or sources used for the support of the protected person.

(c) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves, and who are in need of support.

(d) Funds expended under this subsection may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

(2) If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make in amounts which do not exceed in total for any year twenty percent (20%) of the income from the estate.

(3) When a minor who has not been adjudged disabled under section 91A-5-401(2) attains his majority, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(4) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(5) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after forty (40) days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under section 91A-3-204 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to

note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in section 91A-3-308 and sections 91A-3-601 through 91A-3-1010, inclusive, except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

Section 91A-5-426. Enlargement or limitation of powers of conservator. Subject to the restrictions in section 91A-5-408(4), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on him by sections 91A-5-424 and 91A-5-425, any power which the court itself could exercise under sections 91A-5-408(2) and 91A-5-408(3). The court may, at the time of appointment or later, limit the powers of a conservator conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by section 91A-5-424 or section 91A-5-425, the limitation shall be endorsed upon his letters of appointment.

Section 91A-5-427. Preservation of estate plan. In investing the estate, and in selecting assets of the estate for distribution under subsections (1) and (2) of section 91A-5-425, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.

Section 91A-5-428. Claims against protected person; enforcement. (1) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

(a) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed;

(b) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator.

A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within sixty (60) days after its presentation. A claim is deemed presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court. The presentation of a claim tolls any statute of limitation relating to the claim until thirty (30) days after its disallowance.

(2) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(3) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance and education of the protected person or his dependents and existing claims for expenses of administration.

Section 91A-5-429. **Individual liability of conservator.** (1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.

(4) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.

Section 91A-5-430. **Termination of conservatorship.** The protected person, his personal representative, the conservator or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to his successors subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected persons or his successors, to evidence the transfer.

Section 91A-5-431. **Payment of debt and delivery of property to foreign conservator without local proceedings.** Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate or other like fiduciary appointed by a court of the state or residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:

(1) that no protective proceeding relating to the protected person is pending in this state; and

(2) that the foreign conservator is entitled to payment or to receive delivery.

If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

POWERS OF ATTORNEY

Section 91A-5-501. **When power of attorney not affected by disability.** Whenever a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney in fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees and personal representative as if the principal were alive, competent and not disabled. If a conservator thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator has the same power the principal would have had if he were not disabled or incompetent to revoke, suspend or terminate all or any part of the power of attorney or agency.

Section 91A-5-502. **Other powers of attorney not revoked until notice of death or disability.** (1) The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by section 91A-5-501, does not revoke or terminate the agency as to the attorney in fact, agent or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives.

(2) An affidavit, executed by the attorney in fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(3) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.

GENERAL PROVISIONS

Section 91A-6-101. **Provisions for payment or transfer at death.**

(1) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust agreement, conveyance or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this code does not invalidate the instrument or any provision:

(a) that money or other benefits theretofore due to, controlled or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(b) that any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand; or

(c) that any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(2) Nothing in this section limits the rights of creditors under other laws of this state.

Section 2. Sections 22-101 through 22-117, 91-101, 91-102, 91-107, 91-108, 91-113 through 91-116, 91-122, 91-125 through 91-130, 91-135 through 91-139, 91-141, 91-201, 91-210, 91-214 through 91-217, 91-227, 91-235, 91-301, 91-303, 91-304, 91-307, 91-308, 91-311 through 91-314, 91-317, 91-319, 91-321, 91-402 through 91-405, 91-411 through 91-418, 91-423 through 91-430, 91-520 through 91-522, 91-612A, 91-612B, 91-701, 91-702, 91-801 through 91-811, 91-901, 91-904, 91-1001 through 91-1003, 91-1101 through 91-1105, 91-1107, 91-1301 through 91-1303, 91-1305 through 91-1312, 91-1401, 91-1402, 91-1404 through 91-1406, 91-1501 through 91-1509, 91-1601 through 91-1604, 91-1701 through 91-1723, 91-1801 through 91-1807, 91-1901 through 91-1906, 91-2002 through 91-2004, 91-2101 through 91-2105, 91-2201 through 91-2204, 91-2207 through 91-2213, 91-2401 through 91-2407, 91-2501 through 91-2507, 91-2601 through 91-2612, 91-2701 through 91-2705, 91-2707 through 91-2712, 91-2715 through 91-2720, 91-2723, 91-2724, 91-2801 through 91-2810, 91-2901, 91-2902, 91-3001 through 91-3039, 91-3101 through 91-3109, 91-3201 through 91-3204, 91-3209 through 91-3212, 91-3301 through 91-3313, 91-3405, 91-3407, 91-3601 through 91-3608, 91-3701 through 91-3706, 91-3801 through 91-3803, 91-3901 through 91-3907, 91-4001 through 91-4012, 91-4101 through 91-4106, 91-4311, 91-4314 through 91-4316, 91-4321, 91-4322, 91-4501 through 91-4508, 91-4510 through 91-4518, 91-4522 through 91-4525, 91-4601 through 91-4604, 91-4606 through 91-4608, 91-4610, 91-4611, 91-4701 through 91-4706, 91-4801 through 91-4822, 91-4901 through 91-4904, 91-4906, 91-4907, 91-4909 through 91-4911, 91-5001 through 91-5007, 91-5101 through 91-5111, 91-5202, 91-5203, 91-5210, 91-5301 through 91-5312, and 93-1404.4, R.C.M. 1947, are repealed.

Section 3. There is a new section to be numbered 91A-6-102, R.C.M. 1947, which reads as follows:

91A-6-102. **Effective date.** (1) This code takes effect on July 1, 1975.

(2) Except as provided elsewhere in this code, on the effective date of this code:

(a) the code applies to any wills of decedents dying thereafter;

(b) the code applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code;

(c) every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this code and is subject to the duties imposed with respect to any act occurring or done thereafter;

(d) an act done before the effective date in any proceeding and any accrued right is not impaired by this code. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right;

(e) any rule of construction or presumption provided in this code applies to instruments executed and multiple-party accounts opened before the effective date unless there is a clear indication of a contrary intent.

Section 4. There is hereby enacted a new section, to be placed in chapter 44, Title 91, R.C.M. 1947, reading as follows:

91-4468. **Personal representative to furnish information — department to determine tax — appeal.** The personal representative, or should the personal representative fail to do so, any interested person, shall make application to the state department of revenue for determination of any tax due upon the estate of a decedent. The applicant shall furnish to the department of revenue the inventory and appraisement required by section 91A-3-706 of this act and of any supplemental inventory under section 91A-3-707 of this act together with a statement, under oath or affirmation, of any property owned by the decedent at the time of his death situated outside of this state and without its jurisdiction, and, further, shall furnish the department with the final accounting of such personal representative as provided by section 91A-3-714 of this act. If the decedent died testate, the personal representative shall likewise furnish the department with a certified copy of the last will of the decedent. If the decedent died intestate, the personal representative shall provide the department with a sworn statement setting forth the names, ages, and residences of the heirs at law of decedent. In all cases, the personal representative shall set forth the proportion of the entire estate inherited by or devised to each of said persons, and the relation, if any, which each devisee, heir, or transferee sustained to the decedent or person from whom the transfer was made. The information so provided shall not be binding upon the department in case it believes the same to be erroneous or untrue. From the information so furnished the department and such other information as it may be able to obtain with reference thereto, the

department shall, with reasonable diligence, proceed to ascertain and determine the amount of tax, if any, due under the provisions of the inheritance tax laws of the state of Montana, and a copy of such determination shall be mailed to the personal representative and to the clerk of the appropriate district court. If no tax is due, the department shall likewise so inform the clerk of district court and the personal representative. Upon receipt of notice from the department of the amount of tax due or that no tax is due, the personal representative shall notify all persons having a beneficial interest in said estate as promptly as may be. Should the personal representative or any person affected by the determination of inheritance tax feel aggrieved by the department's determination, he may, within sixty (60) days after the filing of the copy of such determination with the clerk of district court, appeal the determination to the appropriate district court, by serving upon the department his objections to such determination and by filing such notice, after so serving the same, in the office of the clerk of such court. The court shall set a day for hearing such appeal upon ten (10) days' notice to all interested parties, and at the time and place set shall hear the appeal, upon all papers and records which may be properly presented before it, and shall as soon as possible thereafter issue its order determining the amount of such inheritance tax, if it finds a tax to be due.

Section 5. Section 91-4417, R.C.M. 1947, is amended to read as follows:

"91-4417. **Powers of representative in collection and payment of tax — collection from devisees.** Every *personal representative* shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such *personal representative*, having in charge or in trust any property for distribution, subject to such tax, shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasurer, as herein provided. If such property be not in money, he shall collect the tax thereon upon the appraised value thereof, from the person entitled thereto. He shall not deliver or be compelled to deliver any specific property subject to tax under this law, to any person until he shall have collected the tax thereon. If any such *devise* shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the *personal representative*, and the tax shall remain a lien or charge on such real property for the period provided in section 91-4415, and the payment thereof shall be enforced by the *personal representative*, in the same manner that payment of the *devise* might be enforced, or by the attorney general under section 91-4440. If any such *devise* shall be given in money to any such person for a limited period, the *personal representative* shall retain the tax upon the whole amount, but if it be not in money, and *agreement as to apportionment cannot be reached by him with the devisee or devisees affected*, he shall make application to the *appropriate* court to make an apportionment if the case require it, of the sum to be paid into the hands of such *devisees*, and for such further order relative thereto as the case may require, *such application being treated as a supervised proceeding.*"

Section 6. Section 91-4423, R.C.M. 1947, is amended to read as follows:

"91-4423. **Jurisdiction of district court.** The district court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under the inheritance tax laws, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of the inheritance tax laws, and to do any act in relation thereto authorized by law to be done by a district court in other matters or proceedings coming within its jurisdiction; and if two or more district courts shall be entitled to exercise any such jurisdiction, the district court first acquiring jurisdiction hereunder, shall retain the same to the exclusion of every other district court."

Section 7. Section 91-4430, R.C.M. 1947, is amended to read as follows:

"91-4430. **Notice of hearing.** Notice of such hearing to determine the inheritance tax shall be given *in the manner and for the time provided in section 91A-1-401 of this act*, to all interested persons and to the department of revenue. A copy of the application for exclusion of any property to avoid inheritance tax thereon shall be given with notice of hearing thereof, and notice of any such hearing shall be mailed to the state department of revenue not less than fifteen (15) days before such hearing, upon notice forms provided by the department and containing such information as it may require."

Section 8. Section 91-4437, R.C.M. 1947, is amended to read as follows:

"91-4437. **Court order determining tax — contents.** When the district court *shall be required to make a determination* of the value of any estate which is taxable under the inheritance tax laws, and of the tax to which it is liable, an order shall be entered by the court determining the same, which order shall include a statement of (a) the date of death of the decedent, (b) the gross value of the real and personal property of such estate, stating the principal items thereof, (c) the deductions therefrom allowed by the court, (d) the names and relationship of the persons entitled to receive the same, with the amount received by each, (e) the rates and amounts of inheritance tax for which each such person is liable, and the total amount of tax to be paid, (f) a statement of the amount of interest or penalty due, if any. Such order shall be substantially in the form prescribed by the state department of revenue. A copy of the same shall be delivered or mailed to the county treasurer, the administrator or executor, and the state department of revenue, and no final judgment shall be entered in such estates until due proof is filed with the court that such copies have been so delivered or mailed, and receipts are filed with such court showing the payment of all such taxes, or proof is filed showing that the bond authorized by section 91-4419 has been given."

Section 9. Section 91-4438, R.C.M. 1947, is amended to read as follows:

"91-4438. **Rehearing within sixty days.** *When an appraisal, assessment, or determination of tax is made by a district court the attorney general, state department of revenue, public administrator, county attorney, or any person dissatisfied with the appraisal or assessment and determination of such tax may apply for a rehearing thereof before the district court within sixty (60) days from the fixing, assessing and determination of the tax by the district court as herein provided on filing a written notice which shall state the grounds of the application for a rehearing. The rehearing shall be upon the records, proceedings, and proofs had and taken on the hearing as herein provided unless additional or newly discovered evidence be alleged therefor, and a new trial shall not be had or granted unless specially ordered by the district court.*"

Section 10. Section 91-4448, R.C.M. 1947, is amended to read as follows:

"91-4448. **Forms and blanks.** The state department of revenue shall prescribe such forms and prepare such blanks as may be necessary in inheritance tax proceedings; and such blanks shall be printed at the expense of the state and furnished to *each* district court *or the clerk thereof* upon the request of the judge or clerk thereof."

Section 11. Section 91-4467, R.C.M. 1947, is amended to read as follows:

"91-4467. **Purpose of act — limitation on application.** The purpose of this act is to provide a simplified procedure of removing the inheritance tax lien which attaches upon the death of a grantor where the transfer is from husband to wife, or wife to husband, and where the total value of the real property so transferred does not exceed the value of *twenty-five thousand dollars (\$25,000)*, at the time of death; provided, however, this act shall not apply to other transfers of property under the Inheritance Tax Act."

Section 12. Section 91-4411, R.C.M. 1947, is amended to read as follows:

"91-4411. **Estate tax.** (a) In addition to the inheritance taxes hereinabove imposed, an estate tax is hereby imposed upon the transfer of the estate of every decedent leaving an estate which is subject to the federal estate tax imposed by the United States of America under the applicable provisions of the Internal Revenue Code and which has, in whole or in part, a taxable situs in this state. The tax hereby imposed upon the transfer of each such estate shall be equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to the portion of the decedent's estate having a taxable situs in this state, less the inheritance taxes, if any, due this state, it being the purpose and intent of this section to impose only such additional taxes hereunder as may be necessary to give this state the full benefit of the maximum tax credit allowable against the federal estate tax imposed with respect to a decedent's estate which has a taxable situs in this state. If only a portion of a decedent's estate has a taxable situs in this state, such maximum tax credit shall be determined by multiplying the entire amount of the credit allowable against the federal estate tax for state death taxes by

the percentage which the value of the portion of the decedent's estate which has a taxable situs in this state bears to the value of the entire estate. The tax imposed herein shall be collected by the several county treasurers or the department of revenue for deposit with the state treasurer and distributed as hereafter provided. For the purpose of this tax, the taxable situs of property shall be the same as the taxable situs for inheritance tax purposes.

(b) When payable. The estate tax shall be payable to the county treasurer of the county in which such estate is being probated at the same time, or times, at which the United States tax is payable and shall bear interest, if any, at the same rate and for the same period as such United States tax.

(c) Liability. Administrators, executors, trustees and grantees under a conveyance, made during the grantor's life and taxable hereunder, shall be liable for such taxes with interest, until the same have been paid.

(d) Lien. Said taxes and interest shall be, and remain, a lien on the property for a period of ten (10) years from the date of death, unless sooner paid.

(e) Extension of time. The district court of the county in which such estate is being probated may, for cause shown, extend the time of payment of said tax whenever the circumstances of the case require.

(f) Duplicate returns. It shall be the duty of the *personal* representative of the estate of any decedent, whose estate may be subject to the payment of a United States estate tax, to file duplicates of the United States estate tax returns with the district court of the county in which such estate is being probated *and with the department of revenue*. He shall also file with such court *and with the department* a certificate or other evidence from the bureau of internal revenue showing the amount of the United States estate tax as computed by that department. The *department of revenue* shall enter an order determining such *state estate* tax and the amount thereof so due and payable. Any person in interest aggrieved by such determination shall have the same right to *apply for district court determination and* of rehearing and appeal as is now provided for in the determination of inheritance taxes.

(g) Intent of subdivisions (a) to (h). It is hereby declared to be the intent and purpose of subdivisions (a) to (h) to obtain for this state the benefit of the credit allowed under the provisions of said Internal Revenue Code, to the extent that this state may be entitled by the provisions of said act, by imposing additional taxes and the same shall be liberally construed to effect this purpose.

(h) Provisions applicable. The provisions of sections 91-4401 to 91-4456, inclusive, relating to the tax on inheritances and transfers, shall apply to the taxes imposed by subdivisions (a) to (h), in so far as the same are applicable and not in conflict with the provisions hereof."

Section 13. Section 91-3406, R.C.M. 1947, is amended to read as follows:

"91-3406. **Claims for less than nominal value.** *If the personal repre-*

sentative pays any claim for less than its nominal value, he is only entitled to charge in his account the amount he actually paid."

Section 14. Section 91-612, R.C.M. 1947, is amended to read as follows:

"91-612. **Moneys of estates in hands of public administrator, deposit and payment of — escheated estates fund.** It is the duty of every public administrator, as soon as he receives the same, to deposit with the county treasurer of the county in which probate proceedings are pending, all moneys of the estate, and such moneys may be drawn upon the order of the *personal representative*, countersigned by a district judge, when required for the purposes of administration. It is the duty of the county treasurer to receive and safely keep all such moneys, and pay them out upon the order of the *personal representative*, when countersigned by a district judge, and not otherwise, and to keep an account with such estate of all moneys received and paid to him; and for the safekeeping and payment of all such moneys, as herein provided, the said treasurer and his sureties are liable upon his official bond. The moneys thus deposited may, upon order of the court or judge, be invested, pending the proceedings, in securities of the United States, or of this state, when such investment is for the best interests of the estate. At the final settlement of any estate, if there be no heirs or other claimants thereof, the district judge shall make an order directing the administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer, who shall credit the same and all other moneys belonging to said estate to the escheated estates fund, and the county treasurer shall forthwith remit all of said money to the *department of revenue* with a statement as to the estates to which the money belongs, *which remittance shall be treated as provided in chapter 5, Title 91, R.C.M. 1947, as amended.*"

Section 15. Section 91-131, R.C.M. 1947, is amended to read as follows:

"91-131. **Mortgage not a revocation of will.** A charge or encumbrance upon any estate, for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed."

Section 16. Section 91-1106, R.C.M. 1947, is amended to read as follows:

"91-1106. **Costs and expenses — by whom paid.** *When the validity or probate of a will is contested through court action* the fees and expenses must be paid by the party contesting the validity or probate of the will, if the will in probate is confirmed. If the probate is revoked, the costs must be paid by the party who resisted the revocation, or out of the property of the decedent, as the court directs."

Section 17. There is a new section to be numbered 91A-6-103, R.C.M. 1947, which reads as follows:

91A-6-103. **Terms include personal representative.** Where in the codes of the state of Montana the terms "administrator," "administrator with the will annexed," "executor" or a combination of such terms are

used, such terms shall be deemed to include, unless the context clearly requires to the contrary, the term "personal representative."

Section 18. Section 91-218, R.C.M. 1947, is amended to read as follows:

"91-218. **"Heirs," "relatives," "issue," "descendants," etc.** A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives," or "personal representatives," or "family," "issue," "descendants," "nearest," or "next of kin," of any person, without words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the provisions *relating to intestate succession* in this code."

Section 19. There is a new section to be numbered 91A-6-104, R.C.M. 1947, which reads as follows:

91A-6-104. **Uniform Probate Code takes precedence.** Should any provision of this act conflict with any provisions of other statutes of the state of Montana relating to probate, guardianship, or other subjects incorporated in this act, and such other statute or statutes was or were adopted prior to the enactment of this act, the provisions of this act shall be deemed to be controlling.

Section 20. **Severability.** If any provision of this act or the application thereof to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable.

Approved March 29, 1974

CHAPTER NO. 366

AN ACT REQUIRING THE STATE BOARD OF INVESTMENTS TO MANAGE FUNDS OF THE FIRE DEPARTMENT RELIEF ASSOCIATIONS IN THE POOLED INVESTMENT FUND; REQUIRING ACTUARIAL VALUATIONS OF SUCH ASSOCIATIONS FOR THE DEPARTMENT OF INTERGOVERNMENTAL RELATIONS; FUNDING SUCH VALUATIONS; AMENDING SECTIONS 11-1914, AND 11-1920, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1914, R.C.M. 1947, is amended to read as follows:

"11-1914. **Duties of trustees — investment of surplus funds.** (1) The board of trustees of said fire department relief association shall audit the account of the association at least every six (6) months and shall report the condition thereof at the next regular meeting of said associa-